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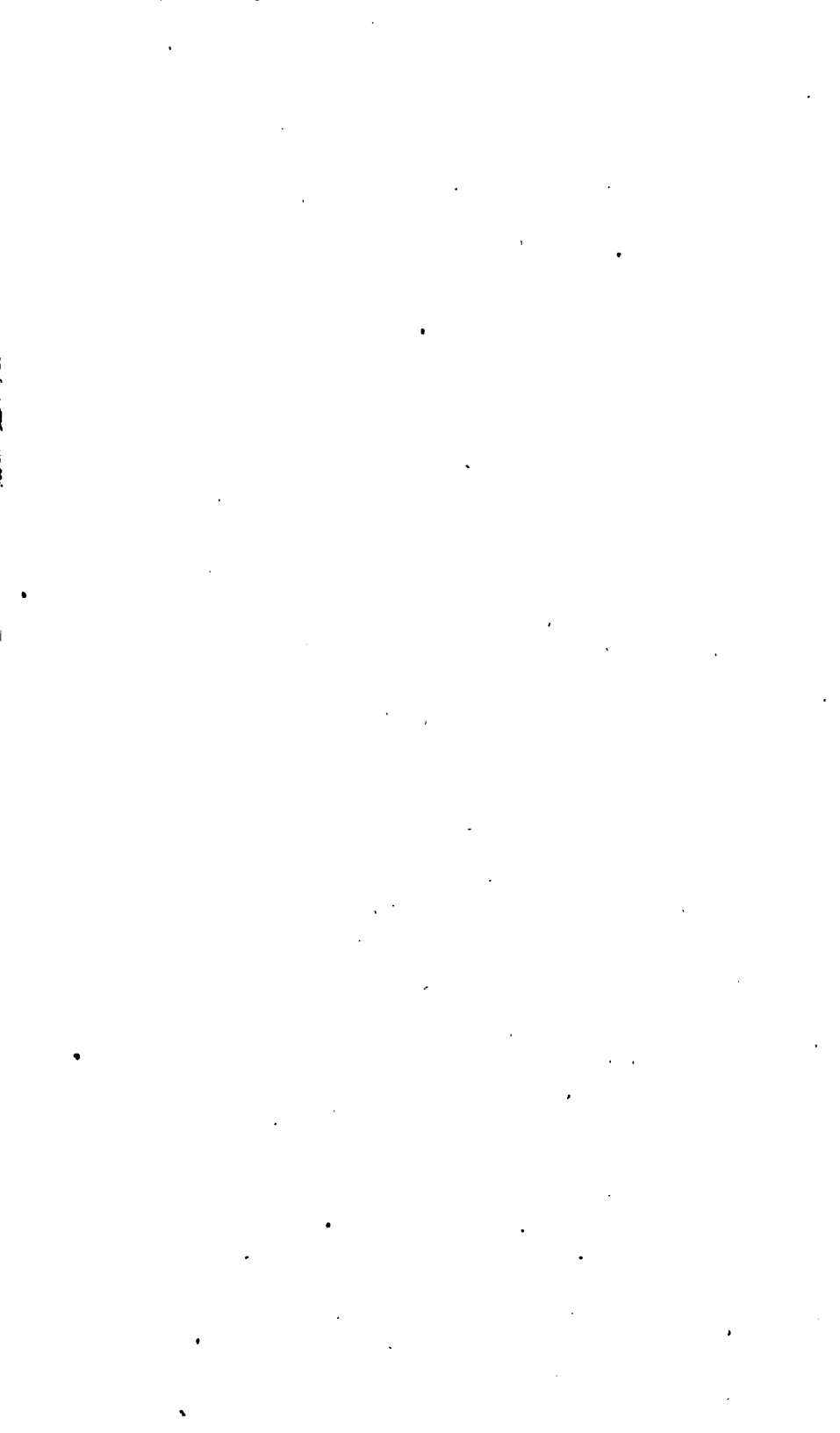


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THE
JUSTICE of the PEACE,
AND
PARISH OFFICER.

By RICHARD BURN, LL.D.
LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

Continued to the Present Time
By JOHN BURN, Esq. his Son,
ONE OF HIS MAJESTY'S JUSTICES OF THE PEACE FOR THE
COUNTIES OF WESTMORLAND AND CUMBESLAND.

The SEVENTEENTH EDITION: Including the
Statutes of the last Session of Parliament (32 Geo. III.)

To which is added,
An APPENDIX, containing the Act respecting ALIENS,
and such others as have passed in the present Session.

IN FOUR VOLUMES.
VOL. III.

L O N D O N:
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FOR T. CADELL, IN THE STRAND.

1793.



Justices of the peace.

JUSTICES of the peace are judges of record, appointed by the king, to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. *Dalt. c. 2.*

And a record or memorial made by a justice of the peace, of things done before him judicially in the execution of his office, shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man may deny it; but if a *record* once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be any end of controversies. And therefore to avoid all contention, while one saith one thing, and another saith another thing, the law reposeth itself wholly and solely in the report of the judge. And hereof it cometh, that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause therefore have the justices to take heed that they abuse not this credit; either to the oppression of the subject by making an untrue record, or the defrauding of the king by suppressing the record that is true and lawful. *Lamb. 63—66.*

Hereof also it cometh, that if a justice of the peace certify to the king's bench, that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. *Dalt. c. 70.*

And that I may treat intelligibly concerning this office (of which *L. Coke* says the whole christian world hath not the like, if it be duly executed, 4 *Inst.* 170.) I will set forth,

Justices of the peace.

- I. The office of conservators of the peace at the common law, before the institution of justices of the peace.*
 - II. The commission of the justices of the peace, founded on the statute law.*
 - III. Oaths to be taken by justices of the peace.*
 - IV. Fees to be taken by justices of the peace.*
 - V. Some general directions relating to justices of the peace, not falling under any particular title of this book.*
 - VI. Their indemnity and protection by the law, in the right execution of their office; and their punishment for the omission of it.*
- I. The office of conservators of the peace at the common law, before the institution of justices of the peace.*

Conservators by
election.

Of ancient times such officers or ministers, as were instituted either for preservation of the peace of the county, or for execution of justice, because it concerned all the subjects of that county, and they had a great interest in the just and due exercises of their several places, were by force of the king's writ in every several county chosen in full or open county by the freeholders of that county: As before the institution of justices of the peace, there were conservators of the peace in every county, whose office (according to their names) was to conserve the king's peace, and to protect the obedient and innocent subjects from force and violence. These conservators, by the ancient common law, were by force of the king's writ chosen by the freeholders in the county court, out of the principal men of the county; after which election so made, and returned, then in that case the king directed a writ to the party so elected, to take upon him and execute the office until the king should order otherwise. And thus the coroners still continue to be chosen in full county: As also the knights of the shire for the parliament. 2 *Inst.* 558, 559.

Conservators by
office.

Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices: As for instance;

(1) The

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(1) The lord chancellor, and every justice of the king's bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizance for it. 2 *Haw.* 32.

(2) Also, every court of record, as such, hath power to keep the peace within its own precinct. *Id.*

(3) Also, every justice of the peace is a conservator of the peace. *Crom.* 6.

(4) Also, every sheriff is a principal conservator of the peace, and may without doubt *ex officio* award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance, or matter of record, and not as a common obligation. 2 *Haw.* 33.

(5) Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace, who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace; and it seems clear, that the security taken by him for the keeping the peace (except only where it is taken by him as judge of his own court for an affray done in such court) is not to be looked on as a recognizance, but as an obligation. *Id.*

(6) Also, every high and petit constable are, by the common law, conservators of the peace. 2 *Haw.* 33.

And it is said, that if a constable see persons engaged in an affray, or upon the very point of entering upon it, as where one shall threaten to kill, wound, or beat another, he may imprison the offender of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find surety of the peace by obligation. 1 *Haw.* 137.

But it is said, that a constable hath no power to arrest a man for an affray done out of his own view; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor doth it follow from his having power to compel those to find sureties who break the peace in his presence, that he hath the same power over those who break it in his absence. *Id.*

There were also other conservators of the peace by tenure; who held lands of the king by this service, among others, of being conservators of the peace within such a district. 2 *Haw.* 33.

Conservators by
tenure.

Also there were other conservators of the peace by prescription; who claimed such power from an immemorial usage in themselves and their predecessors or ancestors, or

Conservators by
prescription.

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those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. *2 Haw. 33.*

Thus it is said, that a mayor of a corporation may be a conservator of the peace by prescription. *Crom. 6.*

It is questioned indeed by some, whether any such power can be claimed by usage; yet if the power of holding pleas and even of courts of record, which are of so high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may; it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. *2 Haw. 34.*

Power of conservators.

The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law, is the same authority which constables of a vill or wapentake have at this day. *Crom. 6. 2 Haw. 34.*

Their duty.

The general duty of the conservators of the peace by the common law, is to employ their own, and to command the help of others, to arrest and pacify all such who in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace. *Dait. c. 1.*

And if a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined. *Id.*

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at, the next sessions of the peace, or gaol delivery, there to object against them. *Id.*

II. Of the commission of justices of the peace.

Justices of the peace at this day are of three sorts: 1. By act of parliament; as the bishop of *Ely* and his successors, and the archbishop of *York*, and bishop of *Durham*, *27 H. 8. c. 24.* 2. By charter, or grant made by the king under the great seal; as mayors and the chief officers in divers corporate towns. 3. By commission.

At the first, by the statute of the *1 Ed. 3.* which is the first statute that ordains the assignment of justices of the peace by the king's commission, those justices had no other power but only to keep the peace. But the very next year the form of the commission was enlarged, and continued still further to be enlarged, both in that king's reign and in the reign of almost every other succeeding prince, until the 30th year of the reign of *Q. Elizabeth*, when by the

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number of the statutes particularly given in charge therein to the justices, many of which nevertheless had been a good while before repealed, and by much vain repetition, and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed. Which imperfections being made known to Sir *Chr. Wrey*, then L. Ch. J. of the king's bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them, the commission was carefully refined in the *Michaelmas* term 1590, and being then also presented to the lord chancellor, he accepted thereof, and commanded the same to be used: Which continues with very little alteration to this day. *Lamb. c. 9.*

Which is as follows:

George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, To A. B. C. D. &c. greeting.

Know ye that we have assigned you, jointly and severally and every one of you our justices to keep our peace in our county of W. And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour, towards us and our people; and if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.

We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one) our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts magick, trespasses, forcellonries, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever, in the said county done or perpetrated, or which shall happen

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to be there done or attempted; and also of all those who in the aforesaid county in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim or cut or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them theretofore made, for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be careless, remiss, or negligent in our aforesaid county; And of all and singular articles and circumstances, and all other things whatsoever, that concern the premises or any of them, by whomsoever, and after what manner soever, in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever so before you or any of you taken or to be taken, or before others late our justices of the peace in the aforesaid county made or taken, and not yet determined; and to make and continue processes thereupon, against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted; until they can be taken, surrender themselves, or be outlawed: And to hear and determine all and singular the felonies, prisonings, enchantments, sorceries, arts magick, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed, or ought to be done; And the same offenders, and every of them for their offences, by fines, ransoms, amerciaments, forfeitures, and other means as according to the law and custom of England, or form of the ordinances and statutes aforesaid it has been accustomed, or ought to be done, to chastise and punish.

Provided always, that if a case of difficulty, upon the determination of any the premises, before you, or any two or more of you, shall happen to arise; then let judgment in no wise be given thereon, before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

And

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And therefore we command you and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premisses, you diligently apply yourselves; and that at certain days and places, which you or any such two or more of you as is aforesaid shall appoint for these purposes, into the premisses ye make inquiries; and all and singular the premisses hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England: Saving to us the amerciements, and other things to us therefrom belonging.

And we command by the tenor of these presents our sheriff of W. that at certain days and places, which you or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without) by whom the truth of the matter in the premisses shall be the better known and inquired into.

Lastly, we have assigned to you the aforesaid A. B. keeper of the rolls of our peace in our said county: And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, &c.

George the third, &c.] This manner of issuing the commission in the king's name, seems to be founded on the statute of the 27 H. 8. c. 24. which enacts, that all justices of the peace shall be made by letters patent under the king's great seal, in the name and by authority of the king; but reserves to all cities and towns corporate which have justices, the liberties which they have enjoyed in that behalf.

To A. B. C. D. &c. greeting] From the persons here named in the commission, it may be proper to consider, who may, or may not, be justices of the peace.

By the statutes of 13 R. 2. c. 7. and 2 H. 5. §. 2. c. 1. The justices shall be made within the counties of the most sufficient knights, esquires, and gentlemen of the law:

And by the 18 G. 2. c. 20. it is enacted as follows: viz. No person shall be capable of being or acting as a justice of the peace for any county, who shall not have in law or equity, for his own use, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more lives, or for a certain term originally created for 21 years or more, in lands, tenements, or hereditaments,

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ments, in *England* or *Wales*, of the clear yearly value of 100*l.* above what will discharge all incumbrances affecting the same, and all rents and charges payable out of the same, or who shall not be intitled to the immediate reversion or remainder of lands leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reserved rents of the clear yearly value of 300*l.*

By the 1 *M. sess.* 2. c. 8. No *sheriff* shall exercise the office of a justice of the peace, during the time that he acts as *sheriff*. And the reason seems to be, because he cannot act at the same time both as judge and officer, for so he would command himself to execute his own precepts. *Dalt.* c. 3.

Also if he be made a *coroner*, this by some opinions is a discharge of his authority of justice. *id.*

But if he be created a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, judge, or serjeant at law, this taketh not away his authority of a justice of the peace.

1 *Ed.* 6. c. 7. *Dalt.* c. 3.

Also, no *attorney*, solicitor, or proctor, shall be a justice of the peace for any county, during the time he shall continue in the practice of that business. 5 *G.* 2. c. 18. s. 2. But this doth not extend to charter justices.

By *Holt* Ch. J. Though a man be a *mayor*, it doth not follow that he is a justice of the peace, for that must be by a particular grant in the charter. *L. Roy.* 1030. But although he be not a justice of the peace by the charter, yet there are many cases, wherein he hath the same power as a justice of the peace given unto him by particular statutes; as for instance, with regard to the customs, ale-houses, Lord's day, swearing, gaming, weights, servants, fuel, leather, orchards, soldiers, and divers others.

Know ye that we have assigned you] This is founded on the statute of the 1 *Ed.* 3. c. 16. viz. for the better keeping and maintenance of the peace, the king wills, that in every county, good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace.

And from this act we are to date that great alteration in our constitution whereby the election of conservators of the peace was taken from the people, and translated to the assignment of the king. *Lamb.* 20.

And here we may observe, that the commission hath two parts; or consisteth of two different assignments: By this first assignment, any one or more justices have as well all
the

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the ancient power touching the peace, which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. *Dalt. c. 5.*

Jointly and severally, and every one of you] Whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices; but where the law giveth authority to two, there one alone cannot execute it. *Dalt. c. 6.*

And yet where a statute appointeth a thing to be done by two justices or more, if the offence be any misdemeanor or matter against the peace, there upon complaint made of the offence, to any of those justices, it seemeth that one of them may grant out his warrant to attach the offender, and to bring him before the same justice and the other justice so appointed (at some convenient place), and then they to hear and determine the same. *id.*

But it seemeth, that when a thing is appointed by any statute to be done by or before one person certain, such thing cannot be done by or before any other: and by such express designation of one, all others are excluded, and their proceedings therein are *coram non iudice. id.*

Our justices] In that the king calls them *our* justices, their authority determines of course by his death or demise, so that he being once dead, or having given over his crown, they are no more his justices, and the justices of the next prince they cannot be, unless it shall please him afterwards to make them. *Dalt. c. 3.*

But by the 1 *Ann. st. 1. c. 8. s. 2.* No patent or grant of any office or employment shall determine by the king's death or demise, but shall continue in force for six months after, unless in the mean time made void by the successor.

Also, before his death or demise, the king may determine the commission at his pleasure; and that either expressed, as by writ under the great seal, or by implication, by making a new commission, and leaving out the former justices' names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. *Dalt. c. 3.*

But to mayors and chief officers in corporations, which have the authority of justices of the peace, or of conservators of the peace, by grant under the king's letters patent to them and their successors, the authority remaineth, notwithstanding the king's death or demise. *id.*

Neither can the king discharge these again at his pleasure: but yet such grants and charters may for some great and

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and general defect, or miscarriage, in the execution of the powers herein granted, be repealed, and the liberties seized. *Dalt. c. 3.*

Justices to keep our peace] Although they are in no part of the commission called *keepers of the peace*, yet inasmuch as by the 18 *Ed. 3. c. 2.* they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their usual description in certioraries is by the name of *keepers of the peace*; it hath been adjudged, that in the caption of an indictment, *keepers of the peace, and justices of our lord the king*, is good without expressly naming them *justices of the peace.* 2 *Haw. 38.*

To keep our peace] These words seem to give them the authority which the conservators of the peace had at common law: and all that follows in the commission, seems an addition to the power of the ancient conservators.

Our peace] It hath been resolved, that the description of justices of the peace, by the name of *justices of our lord the king to keep the peace*, is good, without saying, *the peace of our lord the king*; for that is necessarily implied. 2 *Haw. 38.*

Also, by these words *our peace*, when the king dies, the surety of the peace is discharged; for when he is dead, it is not his peace. *Crom. 124.*

In our county of W.] Here are two considerations; One is, how far a justice can act when he is out of the county: And the other is, when he is in the county, how far his power extends to other counties.

As to the former case, when he is out of the county, it is said, that the justices have no *coercive* power when out of the county; and therefore, that an order of bastardy, or for payment of labourers wages, made by them out of the county is not binding. Yet it is said, that *recognizances* and *informations* voluntarily taken before them in any place, are good. 2 *Haw. 37.*

And *L. Hale* says, that a justice of the peace may do a ministerial act out of his county, as examining a party robbed whether he knows the felons; but that he cannot do a compulsory act, as committing a person for not giving recognizance. 2 *H. H. 50, 51.*

But by 28 *G. 3. c. 49.* Any justice acting as such for any *two or more counties*, being *adjoining counties*, may act in all matters and things whatsoever, concerning or in any wise relating to *any or either* of the said counties: And all acts of such justice, and of any constable or other officer in

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obedience thereto, shall be as valid, good, and effectual in law, as if they had been done in the county to which they more particularly relate. And all constables and other officers of the said county to which such acts relate, are required to obey the warrants, orders, directions, and acts of such justice, so granted and done, and to do and perform their several duties, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty. *f. 1.*

Provided always, That such a justice be personally resident in one of the said counties, at the time of doing such act; and that the warrants, orders, or directions, be directed and given in the first instance, to the constable or other officer of the county to which the same more particularly relate. *ib.*

And it shall be lawful for any constable or other peace-officer, or any other person apprehending or taking into custody any offender, and whom they lawfully may and ought to apprehend, by virtue of their office, or otherwise howsoever, to convey him to any justice acting for the said county, and resident in such adjoining county; and so to act in all things as if the said justice were resident within the said county to which they respectively belong. And all persons obstructing such constables, or other peace officers, in the execution of their respective offices, in such adjoining county, shall be liable to the same pains and penalties, as if the same had been committed in the county for which the said constables or other peace officers were appointed to act. *f. 2.*

And it shall be lawful for any sheriff, constable, peace-officer, or other person, lawfully taking into, or having in his custody, any offender, whom he might lawfully convey to gaol or place of safe custody, to convey such person into and through any part of the said counties so adjoining, in the way to such gaol or place of safe custody, within the county wherein such offence was committed. And all persons escaping from such custody, or aiding or assisting such escape, or rescuing such offender, shall be subject to the like pains and penalties as if the same had been done in the county wherein such offence was committed. *f. 3.*

And as to the latter case, wherein it is supposed that his power is limited unto that county only, it is enacted by the 24 G. 2. c. 55. that if any person against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, any justice of the place where such person shall be, upon proof on oath of the hand-writing of the justice

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justice granting such warrant, shall indorse his name thereon, which shall be a sufficient authority to execute the warrant within such other jurisdiction.

And the justice may further order (if he thinks fit) the party, according as he shall appear bailable or not bailable upon the face of the warrant, to be brought before himself or some other justice or justices of that county, or to be carried back into the county from whence the warrant did issue.

Justices either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. Unless facts are stated to make the contrary appear, the court always presumes in favour of the acts of inferior jurisdictions. *K. v. Morgan, H. 22 G. 3. Cal. Cas. 156.*

Also, by the 9 G. c. 7. A justice dwelling in a city or precinct that is a county of itself, within the county at large, may act at his own dwelling house for such county at large.

And whereas doubts have arisen on the construction of the said act, for the removing whereof, it is enacted by 28 G. 3. c. 49. s. 7. That it shall be lawful for any justice acting for any county at large, to act as such at any place, *within any city, town, or precinct, being a county of itself*, and situate within, surrounded by, or adjoining to any such county at large: But the same shall not extend to give power to the justices for any county at large, not being justices for such city, town, or precinct, or any constable or other officer acting under them, to act or intermeddle in any matter or thing, arising within any such city, town, or precinct, in any manner whatsoever.

And to keep and cause to be kept all ordinances and statutes for the good of the peace] It seems certain, that by virtue hereof, they may execute all statutes whatsoever, made for the better keeping of the peace, and consequently those of *Winchester* and *Westminster*, and all others concerning the peace, made before the reign of *Ed. 3.* in whose time (as hath been said) justices of the peace were first instituted; for all those statutes were expressly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace, say any thing concerning the execution of the said former statutes; so that the power of justices of the peace in relation to those statutes seems entirely to depend on the king's commission,
and

and yet hath always been unquestionably allowed. From whence it appears, that regularly the king, by his commission, may authorize whom he pleases to execute an act of parliament. 2 *Haw.* 37.

But if no power be expressly given in any such statute to any one justice alone, he cannot proceed upon it, but he may prefer the cause at the sessions, and work it to a presentment upon the statute. *Dalt. c. 5.*

But besides the statutes relating to the peace, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes; and all such statutes are to them a sufficient warrant and commission of themselves, altho' they be not recited in the commission, and are to be executed by them, according as the same statutes themselves do severally prescribe and set down. *Dalt. c. 5.*

Statutes for the good of the peace] Although a præmunire is not within the letter of the commission; yet inasmuch as it is against the peace of the king and of the realm, any justice may cause a person to be apprehended for such offence, and take his examination, and informations against him, and certify the same to the king's bench or gaol delivery. 2 *Haw.* 39. And the same may be said of other like offences.

And for the quiet government of our people]. Of our people;—yet it seemeth, that the subjects of a foreign prince coming into *England*, and living under the protection of our king, shall be subject to and have the benefit of the laws, in respect of the local allegiance which they owe to him. 2 *Haw.* 35. 1 *H. H.* 93, 94.

As well within liberties as without] By these words shall be intended such liberties and franchises which have return of writs, and not such as are counties of themselves, as *London, Norwich, York*, and such like. *Crom.* 8.

But yet from hence it seems clearly to follow, that they may execute their office within a town (not being a county of itself) although it have a special commission of the peace for its own limits, unless such commission have a clause, that no other justices except those named in it, shall any way concern themselves in the keeping of the peace within the liberties of such town: And it may be questioned, whether such a special clause in such a commission do absolutely make void the act of any county justice within such town; since the commission for the county seems as fully to give those named in it a jurisdiction over all such towns within the precincts of it, as such commission for a town

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town doth exclude them. And the justices for the county seem to be under no necessity of informing themselves of the contents of a commission, which they have nothing to do with. Yet if they have express notice given them of such a restraining clause, and proceed to act within such town in defiance of it, they may perhaps be punishable for their contempt of the king's prohibition; and yet perhaps it may be questioned whether their acts be void, for the reasons above-mentioned. 2 *Haw.* 37.

And L. *Hale*, treating on the same subject, says, if the king by charter grant to a corporation, that the mayor, and recorder, or other, shall be justices within the same, yet if there be no words of exclusion, the justices of the county have a concurrent jurisdiction: But if this franchise of being justices be granted, *so that the justices of the county shall not intermeddle (se non introrittant)*; then tho' a subsequent commission be granted in the county at large, it seems they have no jurisdiction in this corporation or town; yet it is questionable, whether an indictment in the franchise be void, or only a contempt in the justices. 2 *H. H.* 47.

But in the case of *Talbot and Hubble*, T. 14 G. 2. The question was, whether, as the city of *New Sarum* had an exclusive commission of the peace, the justices of the county of *Wills* could by virtue of the 12 G. 2. c. 23. & 15 G. 2. c. 2. act in excise matters within the city. This case was argued three times at the bar, and this term *Lee* Ch. J. delivered the resolution of the court: 1. That the crown might grant to any city, to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. 2. That in such case, the act of the county justices would be void, and not to be considered only as a breach of the franchise. 3. That tho' the 12 G. 2. gives the jurisdiction in excise matters to the justices of the peace residing near the place where the forfeiture shall be made, or offence committed; yet it never was the design of the legislature, to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction of justices of counties, cities, and places, with respect to their several local jurisdictions within such places. *Str.* 1154.

And in the case of *Blankley v. Winstanley* and another, it was adjudged, that a charter granting jurisdiction to borough magistrates over a district not within the borough, does not exclude the county justices from having a concurrent jurisdiction, without express words in the charter. *Durnf. & East*, 3 V. 279.

Concerning their bodies] *Lombard* and *Dalton* both think it

it seems clear, that if a man is in fear that another will hurt his *servants*, or cattle, or other *goods*, the surety of the peace shall not be granted; but Mr. *Dalton* is of opinion, that if one threatens to hurt a man's *wife*, or *child*, he may crave the peace by virtue of these words. *Lamb. 82. Dal. c. 116.*

Have used threats] It should seem from the many causes which from time to time have been adjudged sufficient to bind to the good behaviour, that this expression is not to be understood of *words* only, but of threatening *actions* likewise, or any thing whereby a man has just cause to apprehend the burning of his houses, or some bodily hurt to be done to him.

To find sufficient security] This is done by recognizance; by a reasonable intendment of law, more than by any especial law in that case provided. *Crom. 125.*

For the peace or their good behaviour] L. *Hale* speaking of the statute of the 34 *Ed. 3. c. 1.* (on which Mr. *Crompton* says the power of justices to bind to the good behaviour is grounded) says, that this power of binding, tho' expressed generally, and without any time limited, yet is not intended to be perpetual, but in nature of bail, *viz.* to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *H. H. 136.*

In our prison] The king's prison is the common gaol of the county: But by the statute of the 6 *Geo. c. 19.* the justices may commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties. .

We have also assigned you and every two or more of you] Here beginneth the second part of the commission, or the second assignment: All the business within which assignment belongeth to the sessions of the peace. *Dalt. c. 5.*

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. *Crom. 6, 7.*

Of whom any one of you the aforesaid A. B. C. D. &c. we will shall be one] This clause which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the *Quorum* (from that word in the *Latin* commissions, *Quorum—unum esse volumus*). For those of the *quorum* were wont to be chosen specially for their knowledge in the laws: and this was it which
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led the makers of several ancient statutes expressly to enact, that some learned in the laws should be put into the commission of the peace; and (to say the truth) all statutes that require the presence of the *quorum*, do tacitly signify such a learned man. For albeit that a discreet person (not conversant in the study of the laws) may sufficiently follow sundry particular directions concerning the service of the peace; yet when the proceedings must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining, according to the streight rule and course of the law, it must be confessed that learning in the laws is very necessary. *Lamb. 48, 49.*

But learning being now greatly advanced and improved since the first institution of this office, this distinction is not of much use, but all or most of the justices are now equally assigned to be of the *quorum*; and by the statute of 26 G. 2. c. 27. no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the *quorum*, (altho' the statutes respectively require that one of the justices shall be of the *quorum*) shall be impeached, set aside, or vacated, for that defect only.

And by the 7 G. 3. c. 21. In cities, boroughs, towns corporate, franchises, and liberties, which have only one justice of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act therein, shall be valid, although neither of the said justices shall be of the *quorum*.

By the oath of good and lawful men] That is, by a jury sworn.

Of all and all manner of felonies] That is, either by the common law, or by statute. *Crom. 8.*

Felonies] Tho' the commission doth not mention *murders* and *manslaughters*, by express name, but only felonies generally, yet by these general words, they have power to hear and determine murder and manslaughter, and also may take an indictment of *se defendendo*, contrary to the opinions of *Fitzherbert* and *Stamford*. But tho' the justices have this power, yet they do not ordinarily proceed to hear and determine these offences, and rarely other offences, without clergy, both because of the monition and clause in their commission, in case of difficulty to expect the presence of the

the justices of assize; and also because of the direction of the statute of the 1 & 2 P. & M. c. 13. which directs justices of the peace, in case of manslaughter and other felonies, to take the examination of the prisoner, and the information of the fact, and put the same in writing; and then to bail the prisoner, if there be cause, and to certify the same with the bail at the next gaol delivery: And therefore in cases of great moment, they bind over the prosecutors, and bail the party, if bailable, to the next gaol delivery; but in smaller matters, as petit larceny, and some cases within clergy, they bind over to the sessions: But this is only in point of discretion and convenience, not because they have not jurisdiction of the crime. 2 H. H. 46.

So also, an inquisition of *self-murder*, if the body cannot be seen, and so not inquired of by the coroner, may be taken before justices of the peace; for it is a felony, and within the extent of their commission. 1 H. H. 414.

So also, if a person hath committed *treason*, though the justices have no cognizance of it as treason, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traitor, and may take his examination, and commit him to prison. 1 H. H. 580.

Poisonings] The word in the Latin commissions was *veneficia*; and before the statute of the 9 G. 2. c. 5. which abolisheth witchcraft, was in the *English* translations rendered witchcrafts.

Incantments, sorceries, arts magick] These also are abolished by the said statute, which enacts, that no prosecution shall thereafter be commenced against any person, for witchcraft, sorcery, incantment, or conjuration.

And from the words continuing in the commission, when the crime itself is abolished, we may observe the averfeness in the superior courts from altering ancient forms.

Trespasses] This is founded on the statute of the 34 Ed. 3. c. 1. which enacts, that the justices assigned shall have power to restrain the offenders, rioters, and all other barators, and to chastise them according to their trespasss or offence.

And upon this Mr. *Hawkins* observes, that the word *trespass* is of a very general extent, and in a large sense not only comprehends all inferior offences, which are properly and directly against the peace, as assaults and

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batteries, and such like, but also all others which are so only by construction, as all breaches of the law in general are said to be. Yet it hath been of late settled, that justices of the peace have no jurisdiction over forgery or perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs, and open violence; and the word trespass in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the said statute and commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 Haw. 40.

The word for trespasses in the old Latin commissions, is *transgressiones*.

Forefallings, regratings, ingrossings] Over these offences the justices in sessions had jurisdiction given to them, by the statute of the 5 & 6 Ed. 6. c. 14. which is now repealed; but the same still continue offences punishable by indictment at the common law.

Extortions] The intent of this word is, to inquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal) who by colour of their office have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. *Crom. 8.*

The justices have no express power given them over this offence by any statute; upon which Mr. *Hawkins* observes, that justices of the peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly or at least by consequence and judgment of law, against the peace: and upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of extortion. 2 Haw. 40.

And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire]
Which

Which general words seem to include the vast number of offences over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

And also of all those who in companies against our peace in disturbance of our people with armed force have gone or rode] By these words they are to inquire of riots, routs, and all unlawful assemblies. *Crom. 8.*

Weights or measures] This clause was first established by the 34 *Ed. 3. c. 5.* And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences.

Selling victuals] Over this they have a jurisdiction given them, by the 2 & 3 *Ed. 6. c. 15.* intituled, *The bill of conspiracies of victuallers and craftsmen.*

And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who in the execution of their offices have unduly behaved themselves] This clause is as ancient as the 4 *Ed. 3. c. 2* on which it is founded.

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall, either of contempt or negligence, do that which is amiss. *Lamb. 49.*

And to inspect all indictments so before you taken] But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery; but on indictments taken before the sheriff in his turn they may proceed. *Hale's Pl. 168.*

Or before other late our justices] This is founded on the statute 11 *H. 6. c. 6.* which enacts, that no indictment, plea, suit or process shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes, and to hear and finally to determine the same, as the former justices might have done.

And to make and continue processes] This is by *venire*, *distringas*, *capias*, or *exigent*, as the case shall be. And it differs from a warrant, in that a warrant is only to attach and convene the party before indictment, and may be

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either in the name of the king or of the justice; but the process issues after indictment, and must be in the name of the king only. *Dalt. c. 193.*

Until they can be taken, surrender themselves, or be outlawed] For the process is sent out to this end, that either the party shall come in to answer and to be justified by the law; or else that he shall for his contumacy be deprived of the benefit of the law. *Lamb. 521.*

Or be outlawed] It is observable that the power of the justices stops here, and goes no further; so that they cannot make out a *capias utlagatum*, but the outlawry must be certified into the king's bench. *Lamb. 521. 2 H. H. 52.*

But by the 12 Co. 103. they that have power to award process of outlawry, have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction.

Hear and determine] This power was first given to them by the statute of the 18 Ed. 3. *st. 2. c. 2.* and afterwards confirmed and enlarged by divers other statutes.

Yet this clause doth not in propriety make the justices of the peace justices of oyer and terminer, because that is a distinct commission; and therefore a statute limiting an offence to be heard and determined before justices of oyer and terminer, gives not the power therein to justices of the peace. *Hale's Pl. 165.*

And thereupon it is said, that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him as it seemeth. *2 H. H. 46, 47.*

Likewise, although commissioners of oyer and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in cases of justices of the peace, unless by consent: but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it must extend only to popular actions or indictments for misdemeanors, and not in cases of felony. *2 H. H. 48.*

By fines, ransoms, amerciaments, forfeitures, and other means—to chastise and punish] Hereby the justices are now armed with far more ample authority and power, than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to examine, hear, or determine the cause, nor to punish, except in some few cases as mentioned before. *Dalt. c. 6.*

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But the justices may not award any recompence to the party wronged, otherwise than by pursuasion. *Dalt. c. 5.*

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices, power, and for the more assured terrifying of offenders. *Lamb. 49.*

If a case of difficulty shall happen to arise] That is, a difficulty in point of law. *Crom. 6.*

Then let judgment in nowise be given] But yet if they list to proceed without the judge's advice, their judgment is not void; but it standeth good and effectual, until it be reversed by a superior court. *Lamb. 50.*

At certain days and places] That is, when they hold their sessions, which they are empowered and required to do by several statutes.

Lastly, we have assigned you the aforesaid A. B. keeper of the rolls] This is in pursuance of the statute of the 37 H. 8. c. 1. which enacts, that the lord chancellor shall by commission assign such person to be *custos rotularum* as the king shall by writing under his hand appoint.

III. Oaths of office and qualification to be taken by justices of the peace.

On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of chancery, to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed; and to certify the same into that court, at such a day as the writ commandeth. Unto which oath are usually annexed the oaths of allegiance and supremacy. *Lamb. 53.*

Oath of office.

The form of which oath of office at this day is as followeth :

Ye shall swear, that as justice of the peace in the county of W. in all articles in the king's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made : And ye shall not be of counsel of any quarrel hanging before you : And that ye hold your sessions after the form of the statutes thereof made : And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entred without any concealment (or embezzling) and truly

send

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send them to the king's exchequer. Ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiff of the said county, or other the king's officers or ministers, or other indifferent persons, to do execution thereof. So help you God.

This oath seems to be founded on the statute of the 13 R. 2. c. 7. which enacts, that the justices shall be sworn duly and without favour, to keep and put in execution all the statutes and ordinances touching their offices.

And such as have once taken the oaths under a writ of *dedimus potestatem*, shall not be obliged, upon the issuing of a new commission, to sue out or have any other *dedimus potestatem* from the clerk of the crown; but the clerk of the peace, or his deputy, shall on every new commission being issued, prepare a parchment roll, with the oaths annexed to and usually taken under the said writ of *dedimus potestatem* ingrossed on such roll, and shall administer without fee to such justices the oaths in such roll specified; which justices having taken the said oaths, shall subscribe their names on the said parchment roll; and the said roll shall be kept amongst the records of the sessions, 1 G. 3. c. 13. s. 2.

But by the 7 G. 3. c. 9. Such persons as have been or shall be appointed justices by any commission granted by his present majesty, and have taken and subscribed or shall take and subscribe the oaths mentioned in the said act of 1 G. 3. and such persons as shall be appointed justices by any commission which shall be granted after his majesty's demise by any of his successors, and shall have, after issuing the first commission whereby such persons shall be appointed justices in the reign of any succeeding king, taken and subscribed the said oaths,—shall not be obliged, during the reign of his present majesty, or during any future reign in which such oaths shall have been so taken and subscribed as aforesaid, to take and subscribe the same oaths by reason of such persons being again appointed justices by any subsequent commission which shall be granted during any such reign. [That is, they shall not be obliged to take and subscribe the said oaths more than once in one king's reign.]

Oath of qualification.

By the 18 G. 2. c. 20. No person shall be capable of acting as a justice of the peace, who shall not, before he acts, at the sessions of the county where he intends to act, take and subscribe the oath following: I A. B. do swear, that

that I truly and bona fide have such an estate, in law or equity, to and for my own use and benefit, consisting of — (specifying the nature of such estate, whether messuage, land, rent, tithe, office, benefice, or what else) as doth qualify me to act as a justice of the peace for the county, riding, or division of — according to the true intent and meaning of an act of parliament made in the 18th year of the reign of his majesty king George the second, intituled, An act to amend and render more effectual an act passed in the fifth year of his present majesty's reign, intituled, An act for the further qualification of justices of the peace; and that the same (except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names) is lying or being, or issuing out of lands, tenements, or hereditaments, being within the parish, township, or precincts of — or in the several parishes, townships, or precincts of — in the county of — or in the several counties of — (as the case may be).

Which oath taken and subscribed, shall be kept by the clerk of the peace among the records of the sessions.

And the clerk of the peace shall, on demand, forthwith deliver an attested copy to any person, paying 2 s. for the same; which being proved to be a true copy of such oath, shall be admitted in evidence on any issue in an action brought on this act.

And if any person shall act as justice, without having taken and subscribed the said oath, or without being qualified as above, he shall for every offence forfeit 100 l.; half to the poor of the parish in which he most usually resides, and half to him who shall sue, with full costs. The prosecution to be in six months. Penalty.

And in such action, the proof of the qualification shall lie on the person against whom it is brought.

And if the defendant intends to insist on any lands not contained in such oath, he shall, at or before the time of pleading, deliver to the plaintiff or his attorney a notice in writing, specifying such lands, and the parish and county where they are situate (offices and benefices excepted, which it shall be sufficient to ascertain by their usual names): And if the plaintiff in such suit shall think fit thereon not to proceed further, he may with leave of the court discontinue such suit, on payment of costs to the defendant as the court shall award.

And upon trial no estate, but what is contained in the oath and notice, shall be admitted as any part of the qualification.

Provided, that where the qualification, or any part thereof,

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of, consists of rent, it shall be sufficient to specify in such oath or notice, so much of the lands, out of which such rent is issuing, as shall be of sufficient value to answer such rent.

And if the plaintiff or informer shall discontinue (otherwise than as aforesaid) or be non-suit, or judgment be given against him, he shall pay treble costs.

Exception of particular places.

But this act shall not extend to any city, town, or liberty, having justices of their own; nor to any peer, lord of the privy council, judge, attorney or solicitor general, or to the justices of the great sessions for *Cheshire* and *Wales*, or to the eldest son or heir apparent of a peer, or of any person qualified to serve as a knight of a shire.

Nor to the officers of the board of green cloth, or principal officers of the navy, or the two under-secretaries in each of the offices of the principal secretary of state, or the secretary of *Chelsea* college, in their respective liberties; nor to the heads of colleges or halls, or vice-chancellor of either of the universities, or to the mayor of *Oxford* or *Canbridge*.

These oaths need not be taken again on the death of the king.

And by 1 G. 3. c. 13. and 7 G. 3. c. 9. All persons who were justices at the demise of his late majesty, or who have been or shall be appointed justices by any commission granted or to be granted by his present majesty or any of his successors, and have taken and subscribed, or shall after the issuing of the first commission, whereby they shall be appointed justices, have taken and subscribed the oath of office before the clerk of the peace or his deputy as aforesaid, and also this oath, shall not be obliged during the reign of his present majesty, or during any future reign in which such oaths shall have been so taken and subscribed, to take and subscribe the same again. And generally there is an indemnifying clause in some act in almost every session of parliament, provided they qualify as aforesaid according to the 18 G. 2. c. 20. within a time in such act limited.

Oaths of allegiance, supremacy, and abjuration.

Also he shall within six months take the oaths of allegiance, supremacy, and abjuration, and make and subscribe the declaration against transubstantiation, in one of the courts at *Westminster*, or at the general or quarter sessions of the place where he shall be or reside, as other persons qualifying for offices.

IV. Fees to be taken by justices of the peace.

In the oath of office above-mentioned are these words :
And that you take nothing for your office of justice of the peace

to be done, but of the king, and fees accustomed, and costs limited by statute.

And by statute their fees in many cases are limited and ascertained; as is noted under their respective titles where they fall in throughout this book.

And for the rest, it is provided generally by the statute of the 26 G. 2. c. 14. That the justices at *Midsummer* sessions 1753, shall settle a table of their clerks fees; which being approved by the justices at the next succeeding sessions, with such alterations as the justices there shall think proper, shall be laid before the judges at the next assizes, who shall confirm the same, with such alterations, additions, or abatements, as to them shall appear just and reasonable: And the sessions from time to time may make any other table of fees, and after the same shall have been approved by the next succeeding sessions, shall lay the same before the judges at the next assizes, who may ratify the same in like manner: and no table of fees shall be valid, until confirmed by the judges. *f. 1.*

And if after three months from the time that such table shall be confirmed, any justice's clerk shall demand or take any other or greater fee than shall have been so confirmed, he shall forfeit 20 l. to him who shall sue in three months. *f. 2. 4.*

And the said table of fees shall be deposited with the clerk of the peace, who shall cause true copies thereof to be kept constantly in a conspicuous part of the room where the sessions are held, on pain of 10 l. *f. 3.*

And by the 27 G. 2. c. 16. In *Middlesex*, the like table shall be confirmed, by the two lords chief justices, and the lord chief baron, or any two of them. *f. 4.*

V. Some general directions relating to justices of the peace, not falling under any particular title of this book.

Regularly, justices of the peace ought not to execute their office, in their own case; but cause the offenders to be convened or carried before some other justice, or desire the aid of some other justice being present. *Dalt. c. 173.* Justice being a party.

By *Holt Ch. J. M. 10 W.* The mayor of *Hereford* was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the court. *1 Salk. 396.*

H. 3 An. The case of *Foxham* tithing in the county of *Wilt.* A justice of the peace was surveyor of the highways,

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ways, and a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption. By *Holt Ch. J.* It ought not to be; as if an action be brought by my lord chief justice *Trevor* in the court of common pleas, it must be before *Edward Nevill*, knight, and his associates, and not before *Thomas Trevor, &c.* And it was quashed. 2 *Salk.* 607.

M. 16 G. 2. Great Chart and Kennington. An order of removal of a poor person from *Great Chart* to *Kennington* was quashed, because one of the justices who made the order was an inhabitant of *Great Chart* at the time, and charged to the poor rate there. And by the court, no rule of law or reason is more established, than that a judge ought to stand disinterested. *Burr. Settl. Cas.* 194.

Justice being assaulted or abused to his face.

Yet in some cases, if the justice shall act in his own cause, it seemeth to be justifiable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require: But if any other justice be present, it were fitting to desire his aid. *Dalt. c. 173. Str.* 420, 421.

Justice although rated, may act in several parochial matters.

And by the 16 G. 2. c. 18. (which seems to have been made in consequence of the determination in the case of *Great Chart* and *Kennington* aforesaid) the justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding that they are rated, or chargeable with the rates within any place affected by such their acts. Provided that this shall not empower any justice for any county at large, to act in the determination of any appeal to the quarter-sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

But not in appeals.

And in the case of *K. v. Yarpole, M. 31 G. 3.* it was determined, that on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes, have not a right to vote. *Durnf. and East, 4 V.* 71.

Ought not to act in his own cause.

And as it is unjust in many cases for the magistrate to act in his own cause, so it is also imprudent: To which purpose the advice of *L. Coke* is applicable, who upon the occasion of mentioning a certain judge, who made a settle-
ment

ment of his estate which was void in law, and brought an action in his own name, which all the other judges, of his own shewing in the count, were of opinion did not lie, makes this observation: That it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more foolish in their own concerns, than in those of other people. *1 Inst. 377.*

If a justice exceed his authority, in granting a warrant, yet the officer must execute it, and is indemnified for so doing; but if it be a case wherein he hath no jurisdiction, or in a matter whereof he hath no cognizance, the officer ought not to execute such warrant; so that the officer is bound to take notice of the authority and jurisdiction of the justice. *Cro. Car. 394. 10 Co. 76.*

Acting without authority.

Thus if a justice send a warrant to a constable to take up one for slander, or the like, the justice hath no jurisdiction in such cases, and the constable ought to refuse the execution of it. *Wood. b. 1. c. 7.*

But by the 24 G. 2. c. 44. If the officer in six days after demand shall grant to the party complaining the perusal and copy of the warrant, he shall not be liable to any action, but the justice only.

Where an act of parliament gives power to two justices finally to hear and determine any offence, or when they are to do any other judicial act, as making an order of bastardy [a], adjudging the settlement of a pauper [b], appointing overseers of the poor [c], allowing the indentures of a parish apprentice [d], and such like, it is necessary that they should be both together to hear the evidence, and to consult together.

Where two justices are required to do any judicial act, they ought to be together.

T. 2 G. Pancras and Rumbald. There was an order of two justices for the removal of a poor person from the parish of *Pancras* to *Rumbald*. Within three days, the justices reciting that they were surprised, superseded it; and commanded the church-wardens to return the former order to be cancelled. It was insisted, that the justices could not issue such a *supersedeas*. But by the court, The *supersedeas* is well sent by the justices, and to prevent the charge of an appeal. And the last order was confirmed. *Str. 6.*

Whether they may supersede their own proceedings.

In the case of the *mayor and corporation of York* against *Sir Lionel Pilkington*, May 14, 1742, The plaintiffs claim-

Cannot determine in cases of property.

[a] *Billings v. Priau, Black. Rep. 1017.*

[b] *K. v. Cole St. Aldwin's, Bur. Sett. Cas. 136.*

[c] *K. v. Forrest. Durnf. & East, 3 V. 38.*

[d] *K. v. Hamfall Kidware, Durnf. & East, 3 V. 308.*

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ed the sole right of fishing in the river *Ouse*, and the defendant claimed a right likewise; and a bill and cross bill were brought in chancery to establish their several rights. Whilst these suits were depending, the plaintiffs caused the agents of the defendant to be indicted at *York* sessions for a breach of the peace in fishing in their liberty. A motion was made in behalf of the defendant, to stop the prosecution. By the lord chancellor *Hardwicke*: This court hath not originally and strictly any restraining power over criminal prosecutions; but, in this case, if the defendant had applied to the attorney-general he would have granted a *noli prosequi*. If an action of trespass had been brought, this court would have stopped them. But, tho' I cannot grant an injunction, yet as the parties have submitted their right to this court, I can make an order to restrain the parties from proceeding at the sessions, till the hearing of the cause in this court, and till further order. Which order was made accordingly. 2 *Atk.* 302.

Not to condemn
any person un-
heard.

In summary convictions the party ought to be heard, and for that purpose ought to be summoned in fact; and if the justice proceed against a person without summoning him, it would be a misdemeanor in him, for which an information would lie. 1 *Salk.* 181. *L. Raym.* 1407. *Str.* 678.

But before an information is granted, the court will first require, that the conviction be removed before them. *Str.* 915.

E. 11 G. 2. K. and Harwood. The defendant being a justice of the peace, was convicted on an information, for a conviction by him made of an alehouse-keeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate the court resolved, it was not of course; and the defendant afterwards appeared in person. *Str.* 1088.

Refusing to pro-
ceed in a cause
depending before
them.

M. 9 G. K. against *Todd* and others. By the 6 *G. c. 21.* the justices of the peace have a jurisdiction given them in some cases to receive an information, and make their determination, upon a seizure of brandy. Upon information exhibited by the officer of the customs, the fact appeared not to warrant the seizure; but the justice, in favour of the officer, refused to dismiss the information, so as the owners might have their brandy again. And now a *mandamus* was moved for, to compel him to determine the matter; which was granted accordingly. *Str.* 530.

H. 7 G. K. against *Newton* and others. By the 1 *G. c. 13. s. 11.* it is enacted, that two justices may, summon
any

any person to take the oaths before them; and if they do not appear, then on oath of serving such summons, the justices are to certify the same to the quarter sessions, where if the party so summoned doth not appear to take the oaths, he shall stand convicted of recusancy. The defendants were justices of the peace, and issued their summons accordingly; but coming afterwards to understand, that the party was a gentleman of fashion, and not suspected to be against the government; lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no further. And now upon motion against them for an *information*, the court declared, that the justices had no discretionary power to refuse to put the act in execution, and therefore granted an *information* against them. *Str.* 413.

Where a special authority is given to justices out of sessions, it ought to appear in their orders, that that authority was exactly pursued. 2 *Salk.* 475.

Authority to appear on the face of their orders.

In all cases where justices may hear and determine out of sessions (*viz.* on their own view, or confession, or oath of witnesses) the justices ought to make a record in writing under their hands of all the matters and proofs; which record notwithstanding in many cases they may keep by them. *Dalt. c.* 115.

To make a record of their proceedings.

And if upon such conviction, the offender is to be fined to the king, then the justices are to *estreat* such fine, and to send the *estreat* into the exchequer, whereby the barons of the exchequer may cause the said fine or forfeiture to be levied for the king's use. *id.*

To *estreat* fines.

L. Hale says (contrary to the opinion of *L. Coke*) that the justices out of sessions may issue their warrant for apprehending persons charged of crimes within the cognizance of the sessions, and bind them over to appear at the sessions, although the offender be not yet indicted. 1 *H. H.* 579.

Whether a justice may issue his warrant for offences cognizable only in the sessions.

But in another place he says, this seemeth doubtful; and that one thing which seemeth to make against it is, that in most cases of this nature, though the party were indicted, or an *information* preferred, yet a *capias* was not the first process, but a *venire facias*, and *distringas*. 2 *H. H.* 113.

And *Mr. Hawkins* on this point saith thus: It seems that anciently no one justice could legally make out a warrant for an offence against a penal statute, or other misdemeanor, cognizable only by a sessions of two or more justices; for that one single justice hath no jurisdiction of such offence, and regularly those only who have jurisdiction over a cause

can

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can award process concerning it; yet the long, constant, universal, and uncontrolled practice of justices of the peace, seems to have altered the law in this particular, and to have given them an authority in relation to such arrests, not now to be disputed. 2 *Haw.* 84.

However, as the authority of justices of the peace is by the statute law, and no statute hath expressly given to them such power (unless in special cases; which operate against, rather than establish, a general power); it seemeth best in ordinary cases, and more consonant to the practice of the superior courts, to issue a summons against the offender, and not a warrant, in the first instance; unless in cases of felony, or where the offender in other respects is to suffer corporal punishment.

Not to trust to
abstracts and
abridgments.

Forasmuch as most of the business of a justice of the peace consisteth in the execution of divers statutes, which cannot be sufficiently abridged, but that they will come short of the substance and body thereof, therefore it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions for their whole proceedings: For (as *L. Coke* observeth) abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially upon them. *Dalt. c.* 173.

Not to trust to
clerks and trans-
cribers.

In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less, to the skill of parish officers in making copies of orders, and the like: But rather it is advisable to have good printed forms; and instead of copies to be taken upon occasion, to make out duplicates.

VI. Their indemnity and protection by the law in the right execution of their office; and their punishment for the omission of it.

A justice is not
to be slandered
or abused.]

A justice of the peace is strongly protected by the law, in the just execution of his office.

Thus, in the first place, he is not to be slandered or abused; as appears by the following report: *M. 11 G. Aston and Blagrove.* The plaintiff declared, that he was a justice of the peace; and that, upon a colloquium of him and the execution of his office, the defendant said, *You are a rascal, a villain, and a liar.* After verdict for the plaintiff it was moved in arrest of judgment, that these words are not actionable. It was urged for the plaintiff;

There is a great difference between magistrates and common tradesmen: Words of the latter must affect them in their particular way of dealing; but any thing that tends to impeach the credit of the former is actionable: And although an *indictment* might not lie for these words, as perhaps not tending to a breach of the peace, yet nevertheless they are *actionable*; for in many cases words are actionable which are not indictable. After consideration, *Pratt Ch. J.* delivered the opinion of the court, that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. *Str.* 617. *L. Raym.* 1396.

Afterwards, *T. 15 G. 2. Kent and Pocock.* These words spoken of a justice of the peace in the execution of his office, and relating thereto, were held actionable, *viz. Mr. Kent is a rogue*; according to the aforesaid case of *Aston and Blagrove.* *Str.* 1168.

E. 7 G. K. and Revel. The defendant was indicted, for saying of *Edward Lawrence* a justice of the peace, in the execution of his office, *You are a rogue and a liar.* It was moved, after verdict for the king, in arrest of judgment, that though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the peace, which is the reason why indictments have been held to lie for words. But by the court, The allowing he might be committed, shews they were indictable. It is true, the justice may make himself judge and punish him immediately; but still, if he thinks proper to proceed less summarily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but where it is behind his back, the party can be only indicted for a breach of the peace. Judgment for the king. *Str.* 420.

T. 14 G. 2. K. and Pocock. An information was moved for against the defendant, on account of words spoken of *Mr. Kent* a justice of the peace. And the affidavit stated, that in a conversation about a warrant granted by *Mr. Kent*, the defendant asked, if *Mr. Kent* was a sworn justice; and being answered, to be sure he was, else he would not act, the defendant replied, *If he is a sworn justice he is a rogue, and a foresworn rogue.* To this it was objected, that the words were not spoken to him in the execution of his office, but only in relation to what he had formerly done: And

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And by the court, There ought to be no information ; it is not the same insult and contempt, as if spoken to him in the execution of his office, which would make it a matter indictable. *Sir.* 1157.

Nevertheless, according to the distinction in the aforesaid case of *Aston* and *Blagrove*, although an *information* or *indictment* might not lie, yet it doth not follow but that the words were *actionable* ; and so it seemeth to have been held in the case last but one abovementioned, of *Kent* and *Pecock*, which seemeth to have been no other than an *action* brought for this very same offence, after it had been determined that an *information* would not lie.

Is not punishable for a mere error in judgment.

In the next place ; he is not punishable at the suit of the party, but only at the suit of the king, for what he doth as judge, in matters which he hath power by law to hear and determine without the concurrence of any other ; for regularly no man is liable to an action for what he doth as judge : But in cases wherein he proceeds ministerially, rather than judicially, if he acts corruptly, he is liable to an action at the suit of the party, as well as to an information at the suit of the king. 2 *Haw.* 85.

And more explicitly, in the case of the *K. v. Young and Pitts*, esquires, justices of the peace for *Wiltshire*, *E.* 31 G. 2. which was upon an information moved for against the justices, for arbitrarily and unreasonably refusing to grant an alehouse licence ; *L. Mansfield* Ch. J. declared, that the court of king's bench hath no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences by way of appeal from their judgments, or over-ruling the discretion in that behalf intrusted to them. But if it clearly appears, that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution, by indictment, or information ; or even, possibly, by action, if the malice be very gross and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished. And he declared that he should always lean towards favouring them ; unless partiality, corruption, or malice shall clearly appear. *Mr. J. Denison* also expressly allowed the discretionary power of the justices in granting licences, without appeal from their judgments, or having their just and honest reasons reviewed by any body. But yet, an improper and unjust exercise of their discretion, he said, ought to be under control. But it must be a clear and apparent partiality or wilful misbehaviour, to induce

induce the court to grant an information: Not a mere error in judgment. Mr. J. *Foster* concurred in the same general principles. And Mr. J. *Wilmot* was also very explicit, that the sole discretion of granting licences is in the justices of the division. Which being so, the rule is invariable, that this court will never interpose to punish a justice of the peace for a mere error in judgment. Therefore, even supposing the justices in the present case to have been mistaken from beginning to end; yet there is no ground, from any of the affidavits, to infer any partiality, malice, or corruption. And the court, being unanimously of opinion, that the justices had acted in this affair with candour and impartiality, discharged the rule to shew cause, with costs. *Burr. Mansf. 556.*

And in the case of the *K. and Cox, E. 32 G. 2.* On shewing cause why an information should not be granted against the defendant, being a justice of the peace, for refusing to receive an information against a baker for exercising his trade on a *Sunday*; the court declared, that they would never grant an information against a justice for a mere error in judgment: But in this case they were of opinion that the justice had acted right in refusing; and they ordered the rule to be discharged, with costs. *Burr. Mansf. 785.*

And finally, in the case of the *K. v. Palmer and Baine, esquires, and others, E. 1 G. 3.* Upon shewing cause why an information should not be granted against two justices of the peace and others, for a misdemeanor, relating to the conviction of a poacher, and the circumstances attending it; the court thought proper, on consideration of the affidavits, to discharge the rule, as to all the defendants; with costs to be paid to the justices, but without costs as to the others. And they were, upon this occasion, most explicit in their declaration, that even where a justice acts illegally (which however was not the present case), yet if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever, the court will never punish him in this extraordinary course of an information; but leave the party complaining to their ordinary legal remedy or method of prosecution, by *action* or by *indictment*. *Bur. Mansf. 1162.*

So in the case of *K. v. Jackson and another, Cas. Durnf. & East, 1 V. 633. Per Cur.* Wherever magistrates act uprightly, tho' they may mistake the law, no information will be granted against them. But, if they act improperly, knowingly, information shall be granted, as in the

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case of *K. v. Holland* and another, 27 G. 3. *Caf. Durnf. & East*, 1 V. 692; and *K. v. Filewood* and another, E. 26 G. 3. for granting an ale licence, previously refused by other justices, upon good grounds, informations were granted.

And the justice shall not be liable to be punished both ways, that is, both criminally and civilly; but before the court will grant an information, they will require the party to relinquish his civil action, if any such is commenced. And even in the case of an indictment, and though the indictment is actually found, yet the attorney-general (on application made to him) will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. *Bur. Mansf.* 719. *K. and Fielding.* H. 32 G. 2.

In the next place, by the 7 J. c. 5. it is enacted, that if any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and if he recovers, he shall have double costs.

And by the 21 J. c. 12. such action shall not be laid, but in the county where the fact was committed.

No action to be brought until a month's previous notice hath been given.

And moreover, by the 24 G. 2. c. 44. it is enacted, that no writ shall be sued out against, or copy of any process at the suit of a subject shall be served on any justice, for any thing done by him in the execution of his office; until notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be intitled to a fee of 20s. and no more. *f. 1.*

And unless it is proved upon the trial, that such notice was given, the justice shall have a verdict and costs. *f. 3.*

Justice may tender amends.

And the justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinue, or if judgment be given for the defendant upon demurrer, the justice shall be intitled to the like costs, as if he had pleaded the general issue only. And if the jury shall find that no amends, or not sufficient, were tendered, and also against the defend-

ant on such other plea, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover with costs. *f. 2.*

And if the justice shall neglect to tender amends, or shall have tendered insufficient, before the action brought, he may, by leave of the court before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay the money into court. *f. 4.*

And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, except such as is contained in the notice. *f. 5.*

And no action shall be brought against any constable or other officer, or any person acting by his order and in his aid, for any thing done in obedience to the warrant of a justice, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought, without making the justice, who signed the warrant, defendant; on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, on proof of such warrant the jury shall find for the constable: And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found. *f. 6.*

Constable how far indemnified.

And moreover, no action shall be brought against any justice for any thing done in the execution of his office, unless commenced within six months after the act committed. *f. 8.*

Actions to be commenced within six months.

On the other hand, it is enacted likewise, by the last mentioned statutes, that where the plaintiff in such action against a justice, shall obtain a verdict, and the judge shall in open court certify on the back of the record, that the injury for which such action was brought, was wilfully and maliciously committed, the plaintiff shall have double costs. *24 G. 2. c. 44. f. 7.*

Their punishment.

Moreover, if a justice will not, on complaint to him made, execute his office, or shall misbehave in his office, the party grieved may move the court of king's bench, for

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an information, and afterwards may apply to the court of chancery to put him out of the commission. *Crom. 7. 2 Att. 2.*

But the most usual way of compelling them to execute their office in any case, is by writ of *mandamus* out of the king's bench.

And in actions brought against the justices (for misdemeanor in the execution of their office), they are obliged to shew the regularity of their convictions; and the informations laid before them, upon which the convictions are grounded, must be produced and proved in court. *1 Sess. Caf. 372. Hill and Bateman, 12 G.*

In the case of the *King and Symonds, E. 9 G. 2.* An information was moved for against the defendant, for assaulting and beating the mayor of *Yarmouth*, being a justice of the peace, in the execution of his office. On shewing cause, the question was, Whether the defendant could justify, the mayor having struck him first. By *L. Hardwicke, Ch. J.* He may justify it; for though a magistrate is protected by the law whilst he is in the execution of his office, yet in this instance he hath forfeited that protection, by beginning a breach of the peace himself. *Cases in the time of L. Hardwicke, 240.*

T. 12 G. 3. K. & Skinner. On motion to quash an indictment against Mr. *Skinner*, a justice of the peace for the town of *Poole*, for scandalous words spoken by him in the general sessions of the peace, in which he said to the grand jury, "You have not done your duty; you have disobeyed my commands; you are a seditious, scandalous, corrupt, and perjured jury."—It was urged in support of the indictment, that it was of high importance that the jury, who are one of the main pillars of the constitution, should not be thrown into open contempt; that an action by any of them separate would not be good, because the offence is not against them in their several and sole capacity, but against them as one body, as a grand jury; and neither could they sue jointly, because they are no corporate body: therefore the remedy by indictment is proper and necessary, and is the only remedy they can have, this being the natural and usual process in all crimes against the public.—On the other hand, against the indictment, it was contended, that this is a new and very singular proceeding. If the words were not spoken against the jury in the execution of their office, they are not words liable to an indictment; and if they were spoken, whilst they were sitting in the execution of their office, the judge was also sitting in the execution of his office; and the principle is clear, that a judge of a court of record is not liable

liable to an indictment for words spoken by him sitting as judge.—By *L. Mansfield* Ch. J. As the counsel in support of the indictment have not found any precedent in the history of *England* for an indictment of this kind, I am willing to give them time till next term to find any. What the counsel on the other side have observed is very just; neither party, jury, nor judge, can be put to answer, civilly or criminally, for words spoken in office. If the words spoken are opprobrious, or not relevant to the case in hand, the court will take notice of them as a contempt, and examine on information. If any thing of *mala mens* is found on such inquiry, it will be punished suitably. The words are extremely improper. If the party were not a borough justice, I think there might be ground to apply to the great seal to remove him from his office. But to go upon an indictment, would be subversive of all ideas of a constitution. If any precedent can be found, you should have time to make use of it; otherwise it would be proper to quash the indictment immediately. *Lofft*, 55.

Other matters relating to the very extensive office of this magistrate, may be found under their proper heads, in almost every title of this book.

Labourers. See Servants.

Landlord and tenant. See Distress.

Land tax.

THE land tax hath succeeded into the place of the ancient fifteenths and subsidies: And the land tax acts are framed in many respects after the manner of the ancient subsidy acts.

We meet with the payment of *fifteenths* as far back as the statute of *Magna Charta*; in the conclusion of which, the parliament grant to the king, for the concessions by him therein made, *a fifteenth part of all their moveable goods*.

This taxation was originally set upon the several *individuals*. Afterwards, to wit, in the eighth year of *Edward* the third, a certain sum was rated upon every town, by commissioners appointed in the chancery for that purpose, in like manner as commissioners are now appointed by the several land tax acts for carrying the said acts into execution; which commissioners rated every town at the fifteenth part of the value thereof at that time, and their taxation was

was recorded in the exchequer: And the inhabitants rated themselves proportionably for their several parts to make up the general sum upon the whole township. This *fifteenth* amounted in the whole to 29,000 l. or near thereabouts.

But as the necessities of government multiplied, and the values of things increased, this *fifteenth* was insufficient for the occasions of the public; and thereupon the number of *fifteenths* was augmented to two or three *fifteenths*. Which still proving defective, another and quite different taxation was superadded, namely the *subsidy*; which was an aid to be levied of every subject of his lands or goods, after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods. And accordingly, in the ancient *subsidy acts*, there is first a grant of so many *fifteenths*, and then the grant of a *subsidy*.

These *fifteenths* were certain, as hath been said, from the time of the eighth of *Edward the third*; but the *subsidy* was uncertain, and amounted anciently to about 70,000 l.; and a *subsidy* of the clergy at the same time (including the monasteries) was 20,000 l. In the 8 *Eliz.* a *subsidy* amounted to 120,000 l. In the 40 *Eliz.* it was not above 78,000 l. Afterwards it fell to 70,000 l.; and by reason of a loose and uncertain way of assessing the same, kept continually decreasing, until the parliament found it necessary to change the method of taxation, and in the time of the long parliament certain sums were fixed upon the several counties; which course of taxation still continues. 2 *Inst.* 77. 4 *Inst.* 33. 34. *Hume's Hist. of Eng.* vol. 5. p. 226, 7. *Gilb. Excheq. ch.* 14.

The land tax acts are annual, but with little variation. The subject matter thereof, according to the natural order of the business, distributes itself under the following heads:

- I. The first meeting of the commissioners, for issuing precepts to return assessors.
- II. The second meeting: Charge to the assessors, and therein concerning the manner of laying the assessment.
- III. The third meeting: Signing the assessment, with warrant to collect.
- IV. Fourth meeting: The appeal.
- V. Collecting.
- VI. Collector paying to the receiver-general.
- VII. Receiver paying into the exchequer.
- VIII. Duplicates to be transmitted.

IX. Ge-

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty,

I. The first meeting of the commissioners, for issuing precepts to return assessors.

No person shall be capable to act as commissioner in any county or riding at large (the counties of *Merioneth, Cardigan, Carmarthen, Glamorgan, Montgomery, Pembroke, and Monmouth* excepted) unless he be seised of lands, tenements, or hereditaments, being freehold, copyhold, or leasehold, over and above all ground rents, incumbrances, and other reservations, payable out of or in respect of such leasehold estates, which were taxed or did pay, in the year next before, in the same county or riding, for the value of 100 l. a year of his own estate.

Qualification of commissioners.

But this shall not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque ports, or the inns of court or chancery.

And no attorney or solicitor, or person practising as such, shall act as commissioner, without having 100 l. a year as above. Nor shall any receiver-general, or collector of any aid granted to his majesty, act as commissioner.

And if any commissioner disabled shall presume to act, he shall forfeit 50 l. to him who shall sue (in six months, 5 G. 3. c. 21.).

And if there is not a sufficient number of qualified commissioners within any city or place for which commissioners are particularly appointed, the commissioners of the county may act therein.

And no commissioner shall act, until he hath taken the oaths of allegiance, supremacy, and abjuration, which shall be administered to him by two or more commissioners, on pain of 200 l. to the king. [And by 28 G. 3. c. 2. s. 49. likewise, if required, an oath specifying in writing the parish, situation, quantity of land, whether freehold or copyhold, of the premises which entitle him to act as a commissioner.]

To take the oaths.

And they shall meet at the most usual and common places of meeting, on or before *April 30.*

Time and place of meeting.

At which first meeting, they may subdivide themselves, and the other commissioners not then present, so as three or more be appointed for each division: but shall not thereby restrain any commissioners from acting in any other part of the county.

Subdividing.

And shall set down in writing, who, and what number

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of the commissioners shall act in each division, and shall deliver a copy thereof to the receiver-general.

And clerks shall be appointed by a majority of the acting commissioners present at each respective meeting, within every such division.

Each respective meeting] *H. 26 G. 3. K. v. Commissioners of St. Martin in the Fields.* L. Mansfield said, If clerks were appointed under the land tax act *each time of meeting*, there would be no end to the elections: But they receive their allowance under an *annual warrant*, and their appointment is at least for a year. *Cases by Durnf. and East, 1 V. 147.*

Receiver-general, who,

Which receiver-general shall be appointed by the king, or in pursuance of his directions; and shall have a salary allowed to him by the lords of the treasury, not exceeding 2d. a pound.

And the death or removal of a receiver-general shall be notified to two or more commissioners, by the commissioners for the affairs of taxes, before the time of the first quarterly payment.

And the receiver-general shall give notice under his hand and seal of his appointing a deputy (which appointment shall be also under hand and seal) to two or more commissioners, in ten-days after the first meeting, and in ten days after the death or removal of a deputy.

Commissioners to set down the sums on each division.

And the said commissioners, at such first meeting, shall set down in writing the sums to be charged on each division, in proportion to the sums which were assessed thereon by the land tax act, in the fourth year of the reign of *W. & M.*

Note: There is said to have been a hearing on *Feb. 10, 1746*, before the barons of the exchequer, upon the question, whether the commissioners of the land tax, at their general meeting for the city and liberty of *Westminster*, have power to alter the *quota's* in their several parishes, which was continued next day, and that the barons declared they could not depart from the *4 W. & M.* and the parliament only could redress the aggrieved parishes. And also in the case of *K. v. St Paul's, Covent Garden, H. 22 G. 3.* respecting the county rate, it was determined that the proportions in which the county rate had usually been assessed on the several parishes could not be altered. *Cald. Caf. 158.*

Where the same shall exceed 4s. in the pound.

But where the proportion upon any division shall exceed 4s. in the pound, by reason of the estates of papists and nonjurors having been charged double within such division, in the *4 W. & M.* (the sum raised in that year on every division governing the proportions at present, and the

Land tax.

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the said estates are not now liable to pay double, by reason of their being in the hands of persons who have taken the oaths; in such case, two or more commissioners may certify the same to the barons of the exchequer, who may order so much of the proportion upon such division, to be abated, as exceeds the full sum of 4 s. in the pound upon the estates therein.

Also, at such first meeting, two or more commissioners shall direct their several or joint precepts (A) to such inhabitants, high constables, petty constables, bailiffs, and other officers and ministers, and such number of them as they shall think most convenient, to be presentors and assessors, requiring them to appear before the said commissioners, at such time and place, not exceeding eight days after the date of such precept, as they shall appoint.

They shall also appoint assessors and collectors in privileged and extraparochial places.

But no person in a city, borough, or town corporate, shall be compelled to be an assessor or collector out of the limits thereof.

[And by the 20 G. 3. c. 17. At the said meeting for appointing assessors, the commissioners shall cause to be delivered to each assessor, a printed form of an assessment, according to which they shall make their assessments; which shall be in this manner :

Issuing precepts to return assessors.

Printed forms to be delivered.

County of N.
to wit.
For the parish
of — in the
said county.

An assessment made in pursuance of
an act of parliament passed in the —
year of his majesty's reign, for grant-
ing an aid to his majesty by a land tax
to be raised in Great Britain, for the
service of the year —.

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B. —	Himself. —	— — —
A. B. —	C. D. —	— — —
E. F. —	C. D. —	— — —
C. D. —	G. H. —	— — —
J. K. —	N. O. —	— — —
and —	R. S. —	— — —
L. M. —	and —	— — —
P. Q. —	T. U. —	— — —

Signed this — day of — 17—.

By us,

A. B. } Assessors.
C. D. }

And

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And if any person or persons shall hold or occupy messuages, lands, or tenements, belonging to different owners, the same shall be separately and distinctly rated in such assessments, that the proportion of the land tax to be paid by each separate owner respectively may be known and ascertained.]

II. The second meeting: Charge to the assessors, and therein concerning the manner of laying the assessment.

Assessor not appearing.

Assessor not appearing, without lawful excuse to be made out on the oath of two witnesses; or appearing, and refusing to serve, shall forfeit to the king, not more than 5 l. nor less than 40 s.

Charge to the assessors.

The commissioners shall openly read, or cause to be read, to the assessors, the several rates, duties, and charges, and openly declare the effect of their charge unto them, and how and in what manner they ought to make their assessments, and how to proceed in the execution of the act. Which shall be in the manner following; that is to say;

Assessment on personal estates.

Towards raising the sums required (supposing the tax to be laid at 4 s. in the pound for that year), the charge upon *personal* estates shall be thus: *viz.* All persons having an estate in goods, wares, merchandises, or other chattels, or personal estate whatsoever, within *Great Britain* or without, belonging to or in trust for them, shall pay 4 s. in the pound, according to the true yearly value thereof; that is to say, for every 100 l. of such ready money and debts, and for every 100 l. worth of goods, 20 s.; and after that rate for every greater or lesser quantity. Excepting and deducting thereout such sums as they *bona fide* owe, and such debts as the commissioners shall judge desperate; and except stock upon lands and household stuff, and debts and loans owing from his majesty.

Every person having any public *office* or employment and their substitutes shall pay 4 s. for every 20 s. of their salaries. Except military officers in the army or navy.

Every person having an *annuity* or *pension* out of the exchequer, or out of any branch of the revenue, or to be paid by any person whatsoever, shall pay 4 s. for every 20 s.; except salaries charged upon lands which pay to the full; and except annuities especially exempted by act of parliament. And except annuities paid to superannuated commission or warrant sea officers, or to the widows of sea officers slain in the service of the crown. And except money lent, or advanced to the government, on the security of the act.

And

And except turnpike tolls, and the salaries of turnpike officers.

The charge upon *real* estates shall be as follows: That the entire sum may be raised, all manors, messuages, lands and tenements; all quarries, mines of coal, tin and lead, copper, mundick, iron, and other mines, iron mills, furnaces, and other iron works; salt springs, and salt works; all allom mines and works; all parks, chases, warrens, woods, underwoods, coppices; all fishings, tithes, tolls, annuities, and all other yearly profits; and all hereditaments whatsoever—shall be charged with as much equality and indifference as possible, by a *pound rate*, to make up the several sums charged by the act on each county or place.

On real estates.

Where manors, messuages, lands, tenements, tithes, and hereditaments are encumbered with rent-charges, annuities, fee-farm rents, rent service or other rents thereupon reserved or charged, the owners thereof may detain out of the payment of the same, a proportionable share of the land tax; provided that such rent or annual payment amount to 20 s. a year or more.

Rent charge.

Receivers of fee-farm rents, or other chief rents due to the king, or to any person claiming by grant or purchase from him (by which are meant such fee-farm rents only, as are answerable to the king, or have been purchased from the crown by virtue of the statutes of 22 C. 2. c. 6. and 22 & 23 C. 2. c. 24. or one of them, and which before *March* 25, 1693, were not payable to any college, hospital, reader in the universities, or other person exempted) shall allow 4 s. for every pound of the said rents, and so proportionably for any greater sum than 10 s. to the party paying the same; on pain of 20 l. to the party grieved, with full costs. Provided that such deduction or allowance do not exceed the sum assessed on the whole estate out of which such purchased fee-farm rent issues.

Fee-farm rents of the crown.

But nothing herein shall charge any college or hall in *Oxford* or *Cambridge*, or the colleges of *Windfor*, *Eaton*, *Winton*, or *Westminster*, or the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, or the college of *Bromley*, or any hospital for or in respect of the sites of the said colleges, halls, or hospitals, or any of the buildings within the walls or limits of the same: Or any master, fellow, or scholar, or exhibitor of any such college or hall, or any reader, officer, or master of the said universities, colleges, or halls, or any masters or ushers of any schools; for or in respect of any stipends, wages, rents, profits, or exhibitions whatsoever, arising or growing due to them in respect of the said several

Charities exempted

several places or employments: Or any of the lands which before *March 25, 1693*, did belong to the sites of any college or hall, or to *Christ's* hospital, *St. Bartholomew*, *Bridewell*, *St. Thomas* and *Bethlehem* hospitals in *London* and *Southwark*; or any other hospitals or alms-houses, in respect of any rents, or revenues, which before *March 25, 1693*, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only.

But this shall not discharge any tenants of any houses or lands belonging to the said colleges, halls, or hospitals, alms-houses, or schools, who by their leases or other contracts are obliged to pay and discharge all rates, taxes, and impositions.

H. 28 G. 3. Harrison against *Bulcock* and others. Upon an action of trespass in the Common Pleas, it was determined, That a house within the limits of an hospital, appropriated to an officer of the hospital for the time being, is not assessable to the land tax. *Caf. by H. Black. 1 V. 68.*

In general, all such lands, revenues, or rents belonging to any hospital or alms-house, or settled to any charitable or pious use, as were assessed in the *4 W. & M.* shall be liable; and no other lands, revenues, or rents, then belonging to any hospital, or alms-house, or settled to any charitable or pious use, shall be charged, taxed, or assessed.

And if there shall be any question, how far any lands or tenements, belonging to any hospital or alms-house, not exempted by name, shall be liable, the same shall be finally determined at the appeal.

[But lands given to charities since the *4 W. & M.* shall not be exempted, because the sums upon the several divisions being now charged as they were in that year, if any lands, not then exempted, should now by being appropriated to charities, or otherwise become exempted, this would lay a greater burden upon all the rest. But charities then exempted do lay no greater burden upon the rest now, because they were not charged in the general sum upon the division at that time. And such charities were exempted all along in the subsidy acts before.]

Superannuated
sea-officers, &c.
exempted.

Also superannuated sea-officers, and the pensions of widows of sea-officers slain in the service of the crown, and of the poor knights of *Windser*, and the revenue of the order of the garter. *32 G. 3. c. 5. s. 105.*

Sums payable
without deduc-
tion.

And in all cases where provision is made for the payment of any sum *without deduction*, the same shall not be chargeable with this duty, but shall be clear of all taxes and charges whatsoever. *id. 106.*

No poor person shall be charged with, or liable to the pound rate, whose lands, tenements, or hereditaments are not of the full yearly value of 20 s. in the whole. Poor exempted.

The commissioners shall assess the assessors.

And all places, constablewicks, divisions, and allotments, shall be assessed in such county, hundred, rape, wapentake, constablewick, division, place, or allotment, as they have been usually assessed in. Who shall assess the assessors.
In what places or divisions persons shall be assessed.

Every person, whether he hath a certain place of residence or not, shall be rated for his *personal* estate, at the place where he is resident at the time of the execution of the act: And if he is out of the realm at the time of the assessment, he shall be rated at the place where he was last abiding in the realm.

H. 7 G. Purcell and Weeks. At Taunton assizes, before Price, baron of the exchequer. The plaintiff was an exciseman, and lived in the county of *Devon*, and executed his office in several parishes in that county, and also in a parish that extended into *Somersetshire*. And the commissioners of that county, apprehending they had a concurrent power with the commissioners of *Devon*, to tax him for his salary, on account that he executed his office in their county, they tax him accordingly, and for want of payment distrain. For which, trespass was brought; and ruled, that it well lay; for though he rides about to the publick houses in that county, yet he must be said to keep his office in the town where he lives and hath his books, and there he was only taxable. *Sir.* 417.

And every householder shall, on demand of the assessors, give an account of the names and qualities of such persons as shall sojourn and lodge in their houses; on pain of 5 l. to be recovered as the other penalties.

In a *city or town corporate*, persons having their house in one parish or ward, and goods in another, shall be assessed for the whole where they inhabit.

But if a person hath goods in any *other county* than where he is resident, or had his last residence; he may be assessed for such goods in the county where they are.

Members of parliament shall be assessed for their personal estate, at their mansion houses, or places where they most usually reside during the interval of parliament.

Officers shall pay for the profits of their offices or employments, where the office is executed; and not where the salary is payable: But all other *pensions*, stipends, and annuities (not charged upon lands) shall be assessed where they are payable.

Officers in the receipt of the exchequer, and other publick offices, shall, on request of the assessors, deliver *gratis* true

true lists or accounts of all pensions, annuities, stipends, or other annual payments, and all fees, *salaries*, and other allowances; and if the tax thereupon shall not be afterwards paid, it shall be stopped in such offices, and an account thereof shall be given to the collectors.

And deputies in office shall pay for their principals.

[By the 32 G. 2. c. 33. relating to the duty upon offices, it is provided, that in all future assessments to the land tax, such officers shall not be assessed at an higher rate to the land tax, than they were in the year 1758.]

If a person, having two places of residence or otherwise, shall be *doubly charged* for any personal estate, office, or otherwise; then on certificate of two commissioners for the place of his last personal residence, under hand and seal, of the sum charged upon him there, and on oath made of such certificate before a justice of the place where the certificate shall be made, the person so doubly charged shall be discharged elsewhere.

If any person who ought to be taxed for his personal estate, shall, by changing his place of residence, or by any other fraud or covin, escape from the taxation, and the same be proved before two commissioners or one justice where such person resideth, within one year after such tax made, he shall pay treble, to be levied on his lands and goods, on certificate thereof made into the exchequer by such justice or commissioners.

Every person shall be assessed for *lands* where they lie, and not elsewhere.

And such tax shall be paid by the tenant, who shall deduct it out of his rent: and if any difference shall arise between landlord and tenant, the commissioners, or two of them, shall settle the same.

But contracts between landlord and tenant, or other persons, about paying taxes, shall not be avoided thereby.

The tax on foreign ministers' houses shall be paid by the landlord.

Foreign ministers.

Papists and non-jurors.

Every papist, or reputed papist, being 18 years of age, and upwards, who shall not have taken the oaths of allegiance and supremacy, 1 W. c. 8. shall pay double; unless he take the said oaths, before two commissioners in ten days after the first meeting.

Also every person (whether papist or not) being 18 years old and upwards, and not having taken the said oaths, and upon summons under hand and seal of two commissioners, refusing to take them, or neglecting to appear, shall pay double in like manner.

Quakers.

But quakers refusing to take the oaths, shall not pay double,

double, if they shall make and subscribe the declaration of fidelity in the act of 1 W. c. 18.

And at and after the charge given, the commissioners shall take care, that warrants be issued forth, and directed to two at least of the most able and sufficient inhabitants, appointing and requiring them to be assessors (B); and shall also therein appoint a day and place for the said assessors to appear before them, and to bring in their assessments in writing.

[And the said assessors shall make three duplicates of the assessments; and shall (at least 14 days before delivering the assessments to the commissioners) cause one of the said duplicates, or a fair copy thereof, to be put up upon the door of the church or chapel; or if it be for an extraparo-chial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining. 20 G. 3. c. 17.

Appointing a time to bring in their assessments.

Assessment to be put up on the church door, and three duplicates to be made.

III. The third meeting: Signing the assessment, with warrant to collect.

The assessor, after he is appointed, neglecting or refusing to serve, or not appearing at such third meeting, without lawful excuse, to be proved on oath of two witnesses, or not performing his duty, shall forfeit to the king any sum not exceeding 40 l. to be levied as the rates, and charged to the receiver-general.

Penalty on the assessor not appearing.

At such third meeting, the assessors shall deliver three duplicates of the assessment in writing, signed by them, to the commissioners. 20 G. 3. c. 17.

Duplicates to be delivered in.

And shall then also return the names of two or more able and sufficient persons, living within the places where they shall be chargeable respectively to be collectors; for whom the parish or place shall be answerable.

Collectors names to be returned.

Which collectors shall, if required, give security to three commissioners, equal to the amount of the whole rate on the respective districts, for paying to the receiver-general such money as shall come to their hands; on failure whereof, they may appoint two or more persons who shall give such security: if none are able or willing, then the persons first named shall stand.

Then three or more commissioners shall sign and seal the said three duplicates, and deliver one of them to the collectors (whom they shall nominate and appoint) with warrant to the said collector to collect the same. (C).

Signing the duplicates.

And they shall at the same time give notice to the collectors, at what time and place appeals may be heard and determined;

Appointing the appeal day.

determined; which shall be at least 30 days from the time of signing and sealing and delivering the duplicate to the collectors.

IV. Fourth meeting: The appeal.

Notice of the appeal day to be given in the church, &c.

Every collector shall, within ten days after the receipt of the duplicates, cause publick notice to be given in every parish church or chapel within his district, immediately after divine service on the Lord's day, (if any such divine service shall be performed therein within that time,) of the time and place so appointed by the commissioners for hearing and determining appeals: And shall also, on the same day, cause the like notices to be fixed in writing on the door of such church or chapel.

Duplicates may be inspected.

And the collector shall permit the duplicates to be inspected, at all seasonable times of the day, without fee.

Appellant to give notice in writing.

Every person intending to appeal, shall give notice thereof in writing to one or more assessors that they may attend, if they think fit, to justify the assessment.

Commissioner interested to withdraw.

And in case of any controversy in apportioning the assessments, which concerns any commissioner, such commissioner concerned therein in his own right, or in right of any other for whom he shall act as steward, agent, attorney, or solicitor, shall have no voice, but shall withdraw until it be determined; on pain of any sum not exceeding 20 l. to be levied and paid as the other fines.

Relief in case of overcharge.

And where it appears by proof upon oath, that lands are overcharged by the pound rate, the commissioners at the appeal may make abatement, and cause the sum abated to be reassessed upon the whole hundred, lathe, wapentake, or other division where the overcharges happen, although the pound rate of 4 s. in the pound be thereby exceeded; or upon any person therein undercharged: so that the whole sum charged on such division be fully answered.

Appeal determined, final.

And appeals once heard and determined on the appeal day shall be final, without any farther appeal upon any pretence whatsoever; and without further trouble or suit in law, either in the king's bench or any other court.

Particular appeal with respect to parliamentary voters.

[If the name of the owner of any messuage, land, or tenement, intitled to vote for a knight of the shire, shall not appear to be inserted in the assessment, he may, on giving notice in writing to one of the assessors, appeal to the said commissioners; who shall amend the assessment as they shall see cause. And if any person shall think himself aggrieved by the determination of the commissioners, he may appeal to the justices at the next sessions, giving ten days

days notice thereof to one of the commissioners who signed the duplicate, and to one of the assessors of the place where the estate lies : and the sessions may award costs to either of the parties, and by their order or warrant levy the same by distress. And the commissioners shall cause one of the duplicates so amended to be returned to the assessors, to be by them delivered to the high constable, and by him to the clerk of the peace, to be had recourse to in his possession in cases of election of knights of the shire. 20 G. 3. c. 17.]

V. Collecting.

The collectors shall make demand of the parties themselves if they can be found, or else at the place of their last abode, or upon the premises charged. Demand.

And if any person shall refuse or neglect to pay to the collector on demand, he may levy the same by distress and sale of the goods of the person so neglecting or refusing : [D. E. F.] Distress.

And where any refusal, neglect, or resistance shall be made, he may (calling the constable to his assistance) break open in the day time any house, and by warrant of two commissioners any chest, trunk, box, or other thing, where any such goods are :

Or he may distrain upon the messuages, lands, tenements, and premises ; and the distress so taken, may keep for four days, at the charges of the owner ; and if not paid in four days, then the distress shall be appraised by two inhabitants or other sufficient persons, and sold by the collector, returning the overplus immediately (if any be) over and above the tax, and charge of taking and keeping the distress.

And if any difference shall arise upon taking the distress, the same shall be determined and ended by two commissioners.

And whereas doubts have arisen touching the authority of collectors to distrain for nonpayment of the land-tax, under the warrants usually granted by commissioners at the time of their appointments, It is enacted, that if any person shall refuse or neglect to pay any sum whereat he is assessed, upon demand by the collector, according to the precept to him delivered by the commissioners ; such collector may levy the sum assessed, by distress and sale of the goods and chattels of such person, or distrain upon the messuages, lands, tenements, and premises so charged, without any further authority from the commissioners for that purpose. 28 G. 3. c. 2. s. 17.

Land tax.

In the case of the *India Company* and *Skinner, T. 7 W.* The defendant pleaded the general issue; and upon evidence it was objected, that the warrant was to break open in case of opposition; and this warrant was granted before any default; which ought not to be, no more than a warrant to distrain for poor rates before demand made; for the first ought only to be a confirmation of the assessment, and afterwards upon refusal a new warrant is to be made for distress. And *Holt Ch. J.* said, that strictly it was so; but the practice having been, in this case of taxes, to grant such a conditional warrant to distrain, *communis error facit jus.* Cases of S. 250.

[However it is safer not to leave the non-seizance of the party to the judgment of the officers; but first to issue warrants empowering them to collect, as the act directeth; and then on proof of their refusal, after summoning the party, grant a warrant to distrain.]

Commitment
for want of dis-
tress.

If any person shall refuse or neglect to pay for ten days after demand, or shall convey his goods so that distress cannot be made, he shall be committed (unless he is a peer) by warrant of two commissioners to the common gaol, until payment of the money assessed, and of the charges for bringing in the same.

Levying arrears.

Arrears may be levied by the present commissioners, in the same manner as the present tax.

And where lands or houses are unoccupied, and no distress can be found thereon, the collectors for the time being may distrain at any time after; and shall distribute the money to those who contributed to make it up.

Commissioners
to examine whe-
ther the sums as-
sessed be duly
paid.

And at the expiration of the respective times prescribed for the full payment of the said quarterly assessment, any two commissioners within their division shall call before them the collectors within each respective division, parish, or place, and examine them upon oath, and assure themselves of the full payment of the sums charged upon such division, parish, or place, and of the due return of the same to the receiver general, and by him into the exchequer, to the end there may be no failure in the payment of any part of such assessment. And in case of failure in the premises, the said commissioners are to cause the same to be forthwith levied and paid according to the true intent and meaning of this act. 28 G. 3. c. 2. s. 22.

Tax on wood-
lands, how to be
levied.

Where woodlands are assessed, and no distress can be had, the collector or constable, by warrant of two commissioners, at seasonable times of the year, may cut and sell wood (except timber trees) to pay the tax.

If

If the tax upon any tithes, tolls, profit of markets, fairs or fisheries, or any other annual profits, not distrainable, shall not be paid in six days after demand, the collector, constable, or other officer, by warrant of two commissioners, may seize and sell so much thereof, wheresoever found, as shall be sufficient to pay the tax and charges occasioned by non-payment.

Tax on tithes, tolls, and other annual profits, how to be levied.

VI. Collector paying to the receiver-general.

The collector shall pay the money received, to the receiver-general or his deputy; quarterly; on or before *June 24, Sept. 29, Dec. 25, and March 25*, at such time and place as two commissioners shall appoint; so as the whole sums due be answered by the respective quarterly pay days; and so as the collector shall not be obliged to travel above ten miles from his usual place of abode.

Collector to pay to the receiver.

And if the receiver-general shall wilfully neglect to attend at the time and place appointed, he shall forfeit 100 l. half to the king, and half to him who shall sue.

Receiver neglecting to attend.

The receiver-general, or his deputy, shall give a receipt gratis.

To give receipts.

And at every time and place appointed by the commissioners for the collectors to pay the money to the receiver-general, he shall deliver a list of the money received by him, to such person as two or more commissioners shall under their hands appoint; on pain of forfeiting a sum not exceeding 20 l. to be paid into the exchequer, as the fines on assisors and collectors.

Receiver to deliver lists of money received.

And the collectors shall have 3 d. in the pound, for collecting and giving receipts, which they may detain out of the last payment.

Collector to have 3 d. a pound.

If the collector shall keep in his hands any part of the money by him collected, longer than the time limited, or shall pay any part of it to any other person than to the receiver-general, or his deputy, he shall forfeit [not exceeding 40 l. nor less than 5 l. to be levied by distress. 28 G. 3. c. 2. s. 35.]

Collector making default.

And if any collector shall refuse or neglect to pay any sum by him received, or shall detain in his hands any money by him received, and not pay the same as the act directs, two commissioners may imprison him, or may seize his estate as well freehold as copyhold, and all other estates, both real and personal, to him belonging, or which shall come to his heirs, executors, or administrators. Which said commissioners may appoint a general meeting of the commissioners, and shall give public notice thereof at least

Land tax.

six days before: And the commissioners at such general meeting may sell such estates, or any part thereof, for payment.

And the commissioners at any general meeting may summon collectors, who have fraudulently converted land tax money to their own use, and cause them to pay the same, to make up the deficiency, if there is any in that place; and if there is no deficiency, then to discharge so much of the proportion charged on such place, as that money doth amount to: And if such collector shall neglect or refuse so to pay, the commissioners may imprison him, and seize and sell his estate for payment.

And persons distraining upon collectors, may keep in their hands so much charges for making and keeping, or otherwise relating to the distress, as two commissioners, who ordered the distress, shall judge reasonable.

Receiver to certify defaults,

And in case of failure in payment, the receiver-general shall certify the same into the exchequer; and the place or persons neglecting shall be liable to process.

Deficiency to be reassessed,

If the full proportion upon any division shall not be fully assessed, levied, and paid; or if any share thereof shall be assessed upon any person not able to pay, or upon any empty or void house or land, where it cannot be collected or levied; or, if through wilfulness, neglect, mistake, or accident, the assessment shall not be paid to the receiver-general or his deputy; the same shall be reassessed upon such division.

Receiver falsely returning arrears,

If the receiver-general shall return any persons in arrear who have paid, he shall forfeit treble damages to the party, and double the sum unjustly certified, to the king.

And no receiver shall return any place in arrear, after [two years, 28 G. 3. c. 2. s. 115] but the same shall be a debt on him and his securities.

VII. Receiver to pay into the exchequer.

Receiver robbed,

No receiver general, or any of his agents, shall maintain an action against the hundred, on account of being robbed in carrying the money; unless they be together in company, and in number three at the least.

Paying in to the exchequer,

And the receiver-general, within 20 days after the receipt, shall pay the money into the exchequer.

Which if he shall pay otherwise than into the exchequer, or not within the time limited; he shall forfeit 500*l.* to him who shall sue.

VIII. Du-

VIII. Duplicates to be transmitted. (G.)

The commissioners on or before Aug. 8, or in 20 days after (all appeals being first determined), shall cause to be delivered to the receiver-general or his deputy a schedule or duplicate in parchment under their hands and seals, containing the whole sum assessed upon each parish or place, and also the christian names and surnames of the respective assessors and collectors; and shall transmit a like schedule or duplicate into the king's remembrancer's office in the exchequer; for which the remembrancer, or his deputy, shall give a receipt *gratis*, on pain of 10 l.

Duplicates to be transmitted to the receiver-general, and into the exchequer.

And in the schedules to be transmitted into the king's remembrancer's office, the commissioners shall distinguish and set down the gross sum charged in any division for double taxes, that it may be known how much the double taxes amount to in such division.

And by the 18 G. 2. c. 18. which requires that no person shall vote in the election of a knight of a shire, for any lands which have not been assessed to the land tax for 12 calendar months next before, it is enacted, That the commissioners or three of them shall sign and seal a duplicate of the copies of the assessments to be delivered to them by the assessors, after all appeals determined, and cause the same to be delivered to the clerk of the peace, to be kept amongst the records, and inspected by any person without fee.

To the clerk of the peace.

All which being done, the commissioners clerks, for their trouble in writing the assessments, duplicates, and copies, and all warrants, orders, and instructions relating thereunto, shall have 1^d. in the pound, to be paid by the receiver-general, according to the warrant of two commissioners.

Commissioners clerks to have 1^d. in the pound.

And on the death or removal of the commissioners clerks, into whose custody the duplicates of the several books of assessments, minute books, and other books and papers relating to the land tax have been delivered; such clerks so removed, or the executors or administrators of such clerk dying, shall, within one calendar month after notice in writing signed by 3 or more commissioners, or a true copy thereof given or left at the usual place of abode of such person or persons, deliver up all such books and papers to such person as the said commissioners shall by such notice appoint; on pain of 50 l. with full costs; half to the receiver-general in aid of the land tax, and half to him who shall sue.

Clerks removing or dying.

IX. General penalty on officers not doing their duty.

General penalty.

If any assessor, collector, or other person, shall wilfully neglect or refuse to perform his duty, or shall be guilty of fraud or abuse, three or more commissioners may fine him, not exceeding 40 l.; which shall not be taken off, but by a majority of the commissioners who imposed it. To be levied by warrant of the said commissioners, by distress and sale; in default of distress (if not a peer) to be committed to prison by two commissioners till payment.

To be paid to
the receiver-general.

And all fines shall be paid to the receiver-general, and paid by him into the exchequer, and shall be inserted in the duplicates to be transmitted into the office of the king's remembrancer.

Other penalties are annexed to the several offences.

X. Indemnity of officers in doing their duty.

Officers liable
to no penalties
but those of the
act.
Treble costs.

No commissioner, assessor, or collector shall be liable to any other penalties than those inflicted by the act.

And persons sued for any thing done in the execution hereof, may plead the general issue, and have treble costs.

Note; The business of the commissioners of the land tax, in relation to the duties upon the perquisites of offices, is treated of under the title *Office*; and in relation to the duties upon houses and windows, the same is treated of under the title *Houses*.

A. Precept to the high constable to return assessors.

Westmorland. { To John Bowness, gentleman, high constable of the East Ward within the said county.

WE the commissioners of the land tax for the said county, whose names are hereunto set, and seals affixed, do hereby require you forthwith upon the receipt hereof, to issue out your warrants to all the petty constables within your said ward, in the form or to the effect hereunder following; that is to say,

West-

Westmorland, } To the constable of —
East Ward.

BY virtue of a precept from the commissioners of the land tax for the said county to me directed, you are hereby required forthwith to give notice to the last collectors of the said duty within your constablewick, that they and every of them do personally appear before the said commissioners at — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day, in order to be appointed assessors of the said duty for this present year, and at the same time to receive their charge, how and in what manner to make their assessments, and otherwise how to proceed in the execution of their said office. And be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand the — day of — in the year of our Lord —

John Bowness, high constable.

And this you the said high constable are in no wise to omit, on the peril that shall ensue thereof. Given under our hands and seals the — day of — in the year of our Lord —

B. Appointment of assessors of the land tax, with their charge.

Westmorland. **BY** virtue of an act for granting an aid to his majesty by a land tax, at four shillings in the pound, for the service of this present year, We the commissioners of the said duty for the county aforesaid do hereby nominate and appoint — to be assessors of the said duty, within the township of — in the county aforesaid. And we do hereby require you the said assessors, to make your assessment for the same, according to the proportions of the last assessment for the said duty within your said township. And of your said assessment you are to make out two duplicates in writing, and sign the same with your names; and the same, together with the names of two or more able and sufficient inhabitants to be collectors, you are to deliver unto us at — in — in the county aforesaid, on — the — day of — at the hour of — in the forenoon of the same day. And you are to give notice to the said persons to be by you returned for collectors, that they also do appear at the same time and place, to receive their appointment and charge. Given under our hands and seals, the — day of — in the year of our Lord —

D 4

C. Appoint-

C. Appointment and charge of the collectors of the land tax, with warrant to collect.

Westmorland. **W**E the commissioners of the land tax for the said county, whose names are hereunto set, and seals affixed, do hereby nominate and appoint ——— to be collectors of the land tax for the township of ——— in the said county, for this present year; and do hereby empower them to demand, collect, and receive the same. And you the said collectors are hereby required, within ten days after your receipt hereof, to cause publick notice to be given in the church or chapel immediately after divine service on the Lord's day, and to cause the like notice in writing to be affixed on the door of such church or chapel, that all appeals against the assessment for the same, will be finally heard and determined by the said commissioners, at ——— in the said county, on the ——— day of ——— now next ensuing. And if after the time of such determination, any person shall refuse or neglect to pay the same upon demand, you are hereby required to levy the same by distress and sale, or forthwith to give notice unto us thereof, that such further proceedings may be had therein, as to the law doth appertain. And the same, when collected, you are hereby required to pay unto the receiver-general or his deputy, at the times and places hereafter following; that is to say, ——— deducting out of the last payment thereof 3d. for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and seals, the ——— day of ——— in the year of our Lord ———

D. Complaint to the commissioners on the land tax not paid.

Westmorland. **A.** C. and B. C. collectors of the land tax for the division of ——— in the said county, complain to us two of the commissioners of the land tax for the said county, that A. O. of ——— in the said county, yeoman, refuseth (after demand by the said collectors duly made) to pay his rate or assessment to the land tax in the said division: And thereupon they pray that justice may be done.

Before us
D. E.
F. G.

A. C.
B. C.

E. Summons

E. Summons thereupon.

Westmorland. { To A. O. of — in the said county,
yeoman.

WE whose names are hereunto set and seals affixed, two of the commissioners of the land tax for the said county for this present year, do hereby summon you personally to appear before us at the house of — in — in the said county on — the — day of — at the hour of — in the — noon of the same day, to shew cause why you refuse to pay your proportion of the rate or assessment towards the land tax within the division of — in the said county. Given under our hands and seals the — day of — in the year of our Lord —

F. Distress.

Westmorland. { To A. C. & B. C. collectors of the land
tax for the division of — in the said
county.

WHEREAS in and by a rate and assessment made and signed according to the statute in that case made, A. O. of — in the said county, yeoman, is rated and assessed towards the land tax in the said division for this present year the sum of —. And whereas it duly appears to us, two of the commissioners of the land tax for the said county, that the said sum of — hath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same; and whereas the said A. O. having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid: [Or, And whereas it hath been duly proved to us, that the said A. O. hath been duly summoned to appear before us the said commissioners, to shew cause why the same should not be paid, but he the said A. O. hath neglected to appear according to such summons, and hath not shewed to us any sufficient cause why the same should not be paid:] These are therefore to require you forthwith to make distress of the goods and chattels of him the said A. O. and if within the space of four days next after such distress by you taken, the said sum, together with the charges of keeping the said distress, shall not be paid, that then you do cause the said distress to be appraised by two inhabitants or other sufficient persons, and to sell the same, returning to him the said A. O. the overplus, the charges of taking and keeping the said distress being first deducted.

G. Form

Land tax.

G. Form of the duplicates to be transmitted to the receiver-general, and into the exchequer.

Westmorland. **A** SCHEDULE, containing the whole sum assessed upon each parish or place, within the East Ward of the said county, for and towards an aid granted to his majesty by a land tax to be raised in Great Britain, for the service of the year one thousand seven hundred and seventy-five, and also the christian names and surnames of the respective assessors and collectors; made by us whose names are hereunto set and seals affixed, commissioners of the land tax for the said county, this ——— day of ———, in the year aforesaid.

		l.	s.	d.
Orton	—————	32	17	4
	Assessors { A. B. { C. D.			
	Collectors { E. F. { G. H.			
Raisbeck	—————	34	1	4
	Assessors { I. K. { L. M.			
	Collectors { N. O. { P. Q.			(and so on.)

Larceny.

LARCENY comes from *latrocinium*, *latrocin*; and by contraction, or rather abuse, *larceny*, 3 Inst. 107.

- I. Of grand larceny in general.
- II. Of petit larceny.
- III. Larceny from the person.
- IV. Larceny from the house.
- V. Larceny in a booth or tent.
- VI. Larceny on a navigable river.
- VII. Other larcenies.
- VIII. Receiving stolen goods.
- IX. Offering goods suspected to be stolen, to be pawned or sold.

X. Ad-

X. *Advertising or receiving a reward for helping to stolen goods.*

XI. *Charges of prosecution and conviction how to be paid.*

I. Of grand larceny in general.

Grand larceny is a felonious and fraudulent taking, and carrying away, by any person, of the mere personal goods of another, above the value of 12d. 1 Haw. 89. What is grand larceny.

Felonious and fraudulent] Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake or misadventure; as where persons break open a door, in order to execute a warrant, which will not justify such a proceeding; for in such case there is no felonious intention. 1 Haw. 65.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but because the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary; the same must be left to the due and attentive consideration of the judge and jury, wherein the best rule is, in doubtful matters rather to incline to acquittal than conviction. Only in general it may be observed, that the ordinary discovery of a felonious intent is, if the party doth it secretly, or being charged with the goods denies it. 1 H. H. 509. The mind maketh a felony or a trespass.

But nevertheless, doing it openly and avowedly doth not excuse from felony. So where a man came to Smithfield market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market to try his paces, but instead of that, the jockey rode away with the horse, this was adjudged felony. Kel. 82. Riding away a horse, &c.

So where a person came into a sempstress's shop, and cheapened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be felony. Rayn. 276.

So where a man comes into a house, by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and then runs away with him; this is felony under colour of law. 2 Vent. 94. Kel. 83.

And in Parr's case at the Old Bailey in 1787, it was determined; That obtaining and indorsing a dividend warrant

warrant at the Bank in the name of a stock holder, is "personating a proprietor, and thereby endeavouring to receive the dividend," although no attempt whatever is made to receive the money at the pay office. *Leach's Cr. Law*, 341.

Felony includes trespass.

Taking] All felony includes trespass; and every indictment must have the words *feloniously took*, as well as *carried away*: from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. 1 *Haw.* 89.

Where possession is given for a special purpose, it is not a felonious taking.

And from this ground it hath been holden, that one who finds the goods which I have lost, and converts them to his own use, with intent to steal them, is no felon; and *a fortiori* therefore it must follow, that one who has the actual possession of my goods by my delivery, for a special purpose, as a carrier who receives them, in order to carry them to a certain place; or a taylor who has them in order to make me a suit of clothes; or a friend who is entrusted with them to keep them for my use,—cannot be said to steal them, by embezzling of them afterwards. *id.*

But yet it hath been resolved, that if a carrier open a pack, and take out part of the goods; or a weaver who has received silk to work, or a miller who has corn to grind, take out part thereof, with intent to steal it, it is felony. 1 *Haw.* 90.

So where a man's goods are in such a place, where ordinarily they are or may be lawfully placed, and a person takes them, with intent to steal them, it is felony; and the pretence of finding must not excuse. 1 *H. H.* 506.

Horse going on a common.

So if a man's horse be going upon a common where he has a right to put him, and another take the horse with intent to steal him, it is no finding, but a felony. *id.*

Horse straying.

So also, if the horse stray into a neighbour's ground or common, it is felony in him that so takes him. But if the owner of the ground takes him doing damage, or the lord seize him as a stray, though perchance he hath no title so to do, yet here is not a felonious intention, and therefore cannot be felony. *id.*

Sheep straying.

If one man's sheep stray into another man's flock, and that other person drives it along with his flock, and by bare mistake shears it, this taking is not a felony; but if he knew it to be another's, and marks it with his mark, this is an evidence of felony. 1 *H. H.* 507.

Taking hay or corn and mixing it with others.

L. Hale says, if one man take another man's hay or corn, and mingles it with his own heap or stock; or take another man's cloth, and embroider it with silk or gold; such other person may retake the whole heap of corn, or
cock

cock of hay, or garment and embroidery also; and this retaking is no felony, nor so much as a trespass. 1 *H. H.*

513.

It seems generally agreed, that one who has the bare charge, or the special use of goods, but not the possession of them; as a shepherd who looks after my sheep, or a butler who takes care of my plate, or a servant who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of felony in fraudulently taking away the same. 1 *Haw.* 90.

Taking goods by those who have a bare charge.

By the 21 *H. 8. c. 7.* Servants imbezilling their master's goods to the value of 40 s. or above (although this taking be no trespass) shall be punished as felons. But this shall not extend to any apprentice, nor to any person within 18 years of age. And by the 12 *Ann. c. 7.* If it is taken out of an house, or outhouse, it is felony without benefit of clergy.

Servants imbezilling their master's goods.

Also by the 3 *W. c. 9.* If any person shall take away with intent to steal, or imbezil, any furniture out of his lodging, he shall be guilty of felony.

And carrying away] To make it come within this description, it seemeth that any the least removing of the thing taken from the place where it was before, is sufficient for this purpose, though it be not quite carried off: And upon this ground, the guest, who having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny: So also was he, who having taken an horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. 1 *Haw.* 93.

What shall be deemed a carrying away.

At the *Old Bailey May* sessions 1784, *James Lampier* was indicted for assaulting *Mrs. Hobart*, and taking from her person one gold ear-ring, which he pulled from her ear, and tore the same entirely through, as she was retiring from the Opera house and preparing to step into her carriage: She conceived the ear-ring had been taken away, but on her arrival at home it was found among the curls of her hair. The case was submitted to the judges, who were of opinion, that it was not only a *taking* but a *carrying away*. *Leach's Cr. Law*, 264. 2 Edit.

And in the case of *Henry Coslet* at the *Old Bailey*, Feb. 1782, who was indicted for stealing a quantity of currants which were packed in the fore part of a waggon, and the prisoner had laid hold of this parcel of currants, and had got near the tail of the waggon with them when he was apprehended; the parcel was afterwards found near the middle of the waggon. On this case being referred to the

twelve judges, they were unanimously of opinion, that as the prisoner had *removed* the property from the spot where it was originally placed, with intent to steal, it was a *taking and carrying away*. *Leach's Cr. Law*, 204. 2 Edit.

But in a case referred by Mr. J. *Nares* for the consideration of the twelve judges, they were of opinion, that the prisoner, who had raised up one end of a parcel which lay, as a pocket of hops would, at its length, and placed it upon its end, and had cut the package open, and was proceeding to take out the goods when detected, but had not removed it from its place where it originally lay in the waggon, was *not a sufficient taking and carrying away* so as to constitute a larceny; and the prisoner was discharged. *Leach's Cr. Law*, 204.

Wife.

By any person] A wife may be guilty thereof, by stealing the goods of a stranger; but not by stealing the goods of her husband. 1 *Haw.* 93.

Stealing through
extreme necessity.

It is said by Mr. *Dalton* and others, that it is no felony for one reduced to extreme necessity, to take so much of another's victuals, as will save him from starving; but *L. Hule* says, that this rule by the law of *England* is false; and therefore that if a person being under necessity for want of victuals or clothes, steals another man's goods, it is felony. 1 *H. H.* 54.

One thief stealing from another.

If one stealeth another man's goods, and afterwards another stealeth the same from him; the owner may charge the first or second felon at his choice. *Dalt. c.* 162.

Alien.

An alien, whose sovereign is in amity with the crown of *England*, residing here, and receiving the protection of the law, oweth a local allegiance to the crown during the time of his residence, and if, during that time, he committeth an offence, he shall be liable to be punished for the same, even as a natural born subject. For his person and personal estate are as much under the protection of the law, as the natural born subject's; and if he is injured in either, he hath the same remedy at law for such injury. *Fest.* 185;

So also, an alien whose sovereign is at enmity with us, living here under the king's protection, committing offences, may be proceeded against in like manner; for he oweth a temporary local allegiance, founded on that share of protection he receiveth. *id.*

So also a prisoner of war, although he is not properly subject to the municipal laws of this realm, yet if he commits any offence against the law of nations, or the light of nature and the fundamental laws of all society, he is liable to answer in the ordinary course of justice, as other persons offending in like manner are. As in the case of

Peter

Peter Mshieres, a French prisoner, who was indicted at the gaol delivery for the city of *Bristol* in *August* 1758, before Sir *Michael Forster*, for privately stealing in the shop of a goldsmith and jeweller, a diamond ring, valued at 20*l*. Sir *Michael* says, he thought it highly improper to proceed capitally upon a local statute, against a prisoner of war; and therefore advised the jury to acquit him of the circumstance of stealing in the shop as by the statute, and to find him guilty of simple larceny to the value laid in the indictment. Accordingly, he was burnt in the hand, and sent to the prison appointed for French prisoners. *id.* 188.

Of the mere personal goods] *Mere*; for if the personal goods favour any thing of the realty, it cannot be larceny. And therefore they ought to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner, or even by the thief himself, if he sever them at one time, and then come again at another time and take them. 1 *Haw.* 93. 1 *H. H.* 510.

Stealing goods that favour of the realty.

But by the 4 *G.* 2. c. 32. Every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court-yard, fence, or out-let belonging to any building; he, his aiders and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of felony, and be transported for seven years.

And by the 21 *G.* 3. c. 68. Every person who shall steal, rip, cut, break, or remove, with intent to steal, any copper, brass, bell-metal, utensil, or fixture, being fixed to any building, or in any garden, orchard, court yard, fence, or out-let belonging to any building; or any iron rails or fencing set up or fixed in any square, court, or other place; he, his aiders and abettors, and also all who shall knowingly buy or receive the same, shall be guilty of felony, and transported for seven years, or detained in prison and kept to hard labour, not exceeding three years nor less than one, and within that time, if the court shall think fit, shall be once or oftner, but not more than thrice, publicly whipped.

Also the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper or parchment, on which are written assurances concerning land;

The goods must be of some value.

lands, or obligations, or covenants, or other securities for a debt, or other *chase* in action. 1 *Haw.* 93.

The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by the law, that for their sakes a man shall die: But yet the stealing of an hawk, knowing it to be reclaimed, is felony by the common law and by statute, in respect of that very high value which was formerly set upon that bird. 1 *Haw.* 93.

Stealing records,
&c.

But by the 8 *H. 6. c. 12.* If any person shall steal any record or process belonging to any of the courts at *Westminster*, by reason whereof any judgment shall be reversed, he shall be guilty of felony.

Or exchequer
orders, &c.

And by the 2 *G. 2. c. 25.* If any person shall steal, or take by robbery, any exchequer order or tallies, or other orders, intitling any other person to an annuity or share in any parliamentary fund; or any exchequer bills; bank notes; *South Sea* bonds; *East India* bonds; dividend warrants of the bank, *South Sea* company, *East India* company, or any other company; bills of exchange; navy bills or debentures; goldsmiths notes for payment of money; or other bonds or warrants, bills, or promissory notes for payment of money; he shall be guilty of felony, with or without the benefit of clergy, in the same manner as he would have been, if he had stolen or taken by robbery any other goods of the like value with the money due thereon: But not to work corruption of blood.

Or bank notes.

In the case of *F. Haffel* at the *Old Bailey*, 16 *Oct.* 1730, it was declared felony in a servant of the post office to steal *one* bank note from a letter committed to his care, though the statute only makes it felony to steal *bank notes* in the plural. And Sir *P. Yorke*, then attorney-general, argued, that it was a most unreasonable construction to say that the legislature intended to make it felony to steal *two* notes of 5 l. each, and yet that it should not be felony to steal *one* note of 10,000 l. *Leach's Cr. Law*, 1.

Goods the pro-
perty of no one.

[*Of another*] It seems agreed, that the taking of goods, whereof no one had a property at the time, cannot be felony; and therefore that he who takes any treasure trove, or a wreck, waif, or stray, before they have been seized by the persons who have a right thereto, is not guilty of felony, but shall be punished by fine. 1 *Haw.* 94.

But yet the taking of these must be, where the party that takes them really believes them to be such, and colours not a felonious taking under such a pretence; for
then

then every felon would cover his felony under that pretence. 1 H. H. 506.

Also it is said, that there may be felony in taking goods, the owner whercof is unknown; in which case, the king shall have the goods, and the offender shall be indicted for taking the goods of a person unknown; and it seems, that in some cases the law will rather feign a property, where in strictness there is none, than suffer an offender to escape. 1 Haw. 94.

Neither shall he who takes fish in a river or other great water wherein they are at their natural liberty, be guilty of felony; as he may be, who takes them out of a trunk or pond. 1 Haw. 94. Fish in a river.

Upon the like ground it seems clear, that a man cannot commit felony, by taking hares or conies in a warren, or old pigeons being out of the house; but it is agreed, that one may commit larceny, in taking such or any other creature *feræ naturæ*, if they be fit for food, and reduced to tameness, and known by him to be so. *id.* Hares, conies, and pigeons.

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners. *id.* Goods belonging to a parish.

And it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him who was the owner thereof when it was put on; for a dead man can have no property. *id.* Stealing a shroud.

Above the value of 12 d.] The learned editor of *Hale's History of the Pleas of the Crown* observes, that in former times, though the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ransom; but in the 9 H. 1. it was enacted, that whoever was convicted of theft should be hanged, and the liberty of redemption was entirely taken away; which law continues to this day. But considering the alteration in the value of money, the severity of it is much greater now than it was then; for 12 d. would then purchase as much as 40s. will now: And yet a theft above the value of 12 d. is still liable to the same punishment. Upon which *Sir H. Spelman* justly observes, that while all things else have risen in their value, and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish, that the ancient tenderness of life were again restored. 1 H. H. 12. Value of the goods stolen.

And *L. Coke*, observing that when the statute of the 3 Ed. 1. was made, which makes stealing of goods above the value of 12 d. to be grand larceny, the ounce of silver was of the value of 20 d. and now it is of the value of 5 s.

and above, draws this conclusion, that the thing stolen ought to be reasonably valued, that is, having respect to the great alteration in the value of money. 2 *Inst.* 189, 190. For 20 s. were then a real pound weight; which name we still retain, although the weight is much diminished.

If two persons or more, together, steal goods above the value of 12 d. every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. 1 *Haw.* 95.

Also it seems the current opinion of all the old books, that if one at several times steal several parcels of goods, each under the value of 12 d. but amounting in the whole to more, from the same person, and be found guilty thereof on the same indictment, he shall have judgment of death as for grand larceny; but this severity is seldom practised. 1 *Haw.* 95.

II. Of petit larceny.

What it is.

Petit larceny agrees with grand larceny in the several particulars above-mentioned, except only the value of the goods (and except as hereafter followeth); so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of 12 d. it is petit larceny, if it be but of that value or under. 1 *Haw.* 95.

And if one be indicted for stealing goods to the value of 10 s. and the jury find specially, as they may, that he is guilty, but that the goods are worth but 10 d.; he shall not have judgment of death, but only as for petit larceny. 1 *Haw.* 95.

Can be no accessories.
How far bailable.

In petit larceny there can be no accessories, neither before nor after. 1 *H. H.* 530.

By the 3 *Ed. 1. c. 15.* Persons indicted of petit larceny, if they were not guilty of some other larceny aforetime, are bailable by justices of the peace. And it seems to be agreed, that there is no necessity, that such person be of good reputation: But yet if the crime be open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 *Haw.* 101.

Justices to commit or bail.

For a justice of the peace, before whom an offender shall be brought for petit larceny out of sessions, may not punish the said offender by his discretion, and so let him go; but must have him committed or bailed, to the intent he may come to his trial, as in cases of other felonies: And if upon

his trial, the jury shall find the goods stolen to exceed 12 d. in value, the offender shall have judgment to die for the fault. *Dalt. c. 154.*

It seemeth, that all petit larceny is felony, and consequently requires the word *feloniously* in an indictment for it; yet it is certain that it is not punishable with the loss of life or lands, but only with the forfeiture of goods, and whipping, transportation, or other corporal punishment. *1 Haw. 95.*

Punishment.

III. Larceny from the person.

If the goods are taken from a man's person, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called *robbery*; for which see that title.

If it is without putting him in fear, then it is called barely *larceny from the person*. *1 Haw. 95.*

If it is done privily without his knowledge, by picking of pockets, or otherwise, it is excluded from the benefit of clergy by the 8 *El. c. 4.* (That is, if the thing stolen be above the value of 12 d. *2 H. H. 366.*) But this statute extendeth not to accessaries, either before or after. *2 Haw. 350.*

If it is done openly and avowedly before his face, it is within the benefit of clergy, (*1 Haw. 97.*) except where it is committed in a dwelling-house, or outhouse thereunto belonging, to the value of 40s. from which the benefit of clergy is taken away, by the 12 *Ann. st. 1. c. 7.* hereafter following.

IV. Larceny from the house.

This must be understood where the offence falls short of *burglary*.

By the 3 *W. c. 9.* Every person that shall feloniously take away any goods, being in any dwelling house, any person being therein, and put in fear; or shall rob any dwelling house in the day time, any person being therein; he, his comforters and abettors, shall be guilty of felony without benefit of clergy.

Robbing a dwelling house, some person being therein.

And by the 39 *El. c. 15.* Every person who shall be convicted of the feloniously taking away in the day time any money or goods of the value of 5s. in any dwelling house, or outhouse thereunto belonging, and used to and with the same, although no person be therein, shall be guilty of felony without benefit of clergy.

Robbing an house to the value of 5s. no person being therein.

This requires an actual breaking, and not entering by the doors being open. 1 *H. H.* 548.

Stealing out of an house to the value of 40 s. no person being therein, and the same not broken open.

And by the 12 *Ann. B. 1. c. 7.* Every person that shall feloniously steal any money, goods, or merchandizes, to the value of 40 s. being in any dwelling house, or out-house thereunto belonging, altho' it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Breaking a house in the day time, any person being therein, and put in fear.

And by the 1 *Ed. 6. c. 12. s. 10.* Every person who shall be convicted of breaking any house in the day time, any person being therein, and put in fear, shall be guilty of felony without benefit of clergy.

And this altho' nothing be actually taken: But it requires not only an actual breaking, and putting in fear, but also an entry *with an intent to commit* felony, and so to be laid in the indictment. 1 *H. H.* 548.

Shoplifting to the value of 5 s.

By the 10 & 11 *W. c. 23.* Every person that shall by night or by day, in any shop, warehouse, coach-house, or stable, privately and feloniously steal any goods, wares, or merchandizes, to the value of 5 s. although it be not broken open, nor any person be therein, shall be guilty of felony without benefit of clergy.

Warehouse] In the case of *John Heward* at the Old Bailey, July 3, 1751. He was indicted on this statute, for privately stealing goods, the property of Messrs. *Fludyer* and company in the warehouse of *John Day*: There was another count in the indictment, charging that the prisoner stole the goods of *John Day* in his warehouse. The case upon evidence appeared to be, that *John Day* kept a common warehouse by the water side, where merchants did usually lodge goods intended for exportation, till they could have an opportunity of putting them on board. The goods in the indictment were sent by *Fludyer* and company to this warehouse, in order to be put on board a vessel for exportation, and were stolen by the prisoner in this warehouse. The court was of opinion, that this is not a case within the statute. For by the word *warehouse* in the statute is meant, not a mere repository for goods, but such places where merchants and other traders keep their goods for sale, in the nature of shops, and whither customers go to view them. And though the goods in this case might with propriety enough be charged to be the goods of *John Day*, since he had the charge and possession of them, which made him answerable to his principals for them; yet still the same objection recurrerh, his warehouse was not a place for sale, but merely safe custody. Accordingly the larceny being

being fully proved, the prisoner was by the direction of the court found guilty of larceny, to the value laid in the indictment, and acquitted of stealing privately in the warehouse.——It has been generally held, that the meaning of this act, with regard to *shoplifting*, is, that the goods must be such as are usually exposed to sale in the *shop*, and not any other valuable thing which may happen to be put there. And it seemeth that the same equitable construction should take place with regard to *warehouses*. The goods should be such as are usually exposed to sale in such places. And tho' *coach-houses* and *stables*, which are likewise named in the act, are not places for sale, yet still in the construction of so penal a law, it will not be amiss to carry the same equity as far as may be with regard to them. The goods should be such as are usually lodged in those places. *Fest. 77.*

Privately] If it shall appear on the evidence, as it often doth, that those places were *broke open* at the time of the larceny, the case (as it seemeth) will not come within the act. For the words are,——if any person shall *privately* steal,——which seemeth to exclude all cases, where any degree of force is used to come at the goods. *id. 79.*

Any goods, wares, or merchandize] In which words *money* is not included. For altho' the word *goods* may in a large sense take in money, and often doth, yet being connected with *wares and merchandizes*, the safer construction of so penal a statute will be, to confine it to goods of like kind, goods exposed to sale. *id.*

Money not included.

In like manner, it was ruled, upon the same principle, at *Maidstone* Lent assizes 1752, in the case of *George Grimes*, indicted on the statute, 24 G. 2. c. 45. for stealing a considerable sum of money out of a ship in port: Though great part of it consisted in *Portugal* money, not made current by proclamation, but commonly current. *id.*

But *horses* seem clearly to be included under the word *goods*, by reason of the mentioning *coach-houses* and *stables* before; and *horse-stealers* are specified in the subsequent parts of the act.

Horses included.

Every person who shall apprehend any one guilty of breaking open houses in a felonious manner; or of privately and feloniously stealing goods, wares, or merchandizes, of the value of 5 s. in any shop, warehouse, coach-house, or stable, though they be not broken open, and although no person be therein to be put in fear, and shall prosecute him to conviction, shall have a certificate without fee, under the hand of the judge, certifying such conviction, and with-

Reward for convicting an offender.

Certificate.

Larceny.

in what parish or place the felony was committed, and also that such felon was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned as to him shall seem just and reasonable :

And if any person shall happen to be slain by any such housebreaker, or other felon as aforesaid, in endeavouring to apprehend him, the executors or administrators of such person slain, shall have the like certificate :

Which certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted, for which he shall have 1 s.

And the said certificate may be once assigned over, and no more.

Exemption from
parish offices.

And the original proprietor, or the assignee of the same, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was committed.

But the certificate shall not be assignable, after it has been once made use of to exempt any person from such office. 10 & 11 W. c. 23.

From all manner of parish and ward offices] E. 29 G. 2. K. and Davis. Motion to quash a conviction and the affirmation of it on appeal, removed into the king's bench by certiorari; upon this case:—The defendant, being assignee of a certificate under this act, was appointed by the trustees under an act of the 22 G. 2. to be collector of the parish rates for repair of the roads within the parish of *St. Leonard's, Shoreditch*; and refusing to take the office upon him, insisting that he was exempted by the benefit of his certificate, he was convicted before a justice; and this conviction being affirmed upon appeal to the sessions, it was now moved to quash these proceedings as illegal. After argument on shewing cause:—By *Ryder Ch. J.* The question is, Whether the defendant has a right to be exempted from this office by virtue of his certificate? The act exempts the party, and his assignee, from all parish and ward offices. Here are two questions: First, whether this is a parish office? secondly, whether it is within this act? and though the latter may seem to be a consequence of the former, yet it may be necessary to consider, whether this is the old office of surveyor, or a new office. It is not necessary for a parish officer to be chosen by the parishioners. A parish office must be exercised about parish business;

business; and the officer must be a parishioner: Both which ingredients are here. It may be a question of nicety, whether this act extends to new offices; though I give no opinion as to this point. The office is not co-extensive with that of surveyor; but yet it seems part of that old office. It cannot be presumed, that the 22 G. 2. meant to take away any privilege which the party had before. Therefore as I do not think this a new office, I think the conviction and affirmance thereof ought to be quashed; without giving any opinion, whether the exemption will extend to a new office, which did not exist at the time of the 10 & 11 W.—*Dennison J.* The question is, Whether the collector of the parish rates in the parish, within the 22 G. 2. is a parish officer within the benefit of the certificate under the 10 & 11 W.? I think the act of 10 & 11 W. ought to have a liberal construction. The office of surveyor is partly to be executed by this collector. And it is in fact an old office, divided by an act of parliament, and to be executed by two persons. And the collector is certainly as much a parish officer as the surveyor appointed under this act of parliament. A covenant to pay taxes, extends to subsequent taxes of the same kind. So a privilege of persons from offices. The act does not confine it to offices in being. It was intended as a reward. Therefore the new modelling an old office, shall have the same benefit and construction as the old office itself would be intitled to. — *Foster J.* This must certainly be taken to be a parish office. For the duty is confined to the parish, and to be executed by an inhabitant. I do not take it to be a new office; for it is part at least of the old one. I will go a little further, and suppose it an entirely new created office; and yet if a parish office, I should think it within the 10 & 11 W. Clergymen, at common law, are exempted from all offices; and therefore would be exempted from the new offices. So an attorney's privilege extends to all matters of like nature. So dissenting ministers, being exempted from all offices by the toleration act, are exempt from new offices as well as old ones. — *Wilmut J.* The words of the act of 10 & 11 W. are as general as can be. Nothing can more contribute to the publick safety than apprehending felons, which is the object of the act. It is not necessary to give an opinion; but I take it, if this had been a new office, it would have been within the exemption. This office has every badge of a parish office. It must be exercised by a parishioner; within the parish; the rates are to be applied to a parochial purpose; and I think it not necessary that a parish officer should

should be appointed by the parish, as the constable is a parish officer, though not named by the parish. Nothing can be clearer, than that this is part of the old office of surveyor. — Therefore the conviction, and affirmance thereof, were quashed. M. S.

40 l. reward for convicting.

And moreover, as a further reward, every person who shall apprehend any person guilty of the felonious breaking and entering of any house in the day time, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the said felony was committed, and also that such felon was taken by the person claiming the reward; and if any dispute shall happen to arise between the persons claiming, the judge shall by the said certificate appoint the same to be paid amongst the parties claiming the same, in such shares and proportions as to him shall seem just and reasonable.

And on tender of such certificate to the sheriff, and demand made, he shall pay to the person so intitled the sum of 40 l. without fee, within one month after such tender and demand; on pain of forfeiting double, with treble costs. 5 An. c. 31.

40 l. to the executors of a person killed.

And if any watchman or any other person be killed in endeavouring to apprehend any such housebreaker, his executors or administrators shall have a certificate delivered under the hand and seal of the judge, or of the two next justices, of such person being so killed; which certificate they shall, upon sufficient proof before them made, give without fee: Whereupon such executor or administrator shall be intitled to receive the like sum of 40 l. in like manner. 5 An. c. 31. f. 2.

40 l. and a pardon for convicting accomplices.

And moreover, if any person being out of prison, shall commit any such house-breaking in the day time as aforesaid, and afterwards discover two or more the like offenders, so as two or more be convicted, he shall have the like reward and allowance of 40 l. and also all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an appeal. 5 An. c. 31. f. 4.

Sheriff to be repaid out of the treasury.

And the sheriff, on producing the certificates, and receipts for the said rewards, may deduct the same on his accounts; and if he have not money in his hands, he shall be repaid out of the treasury, on certificate from the clerk of the pipe. 5 An. c. 31. f. 3.

Or instead of charging the same in his accounts, he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without fee. 3 G. c. 15. s. 4.

V. Larceny in a booth or tent.

Persons found guilty of robbing any person in any booth or tent, in any fair or market, the owner, his wife, children, or servants, being within, whether they be sleeping or waking, shall suffer as felons without benefit of clergy. 5 & 6 Ed. 6. c. 9. s. 5.

VI. Larceny on a navigable river.

By the 24 G. 2. c. 45. All persons who shall feloniously steal any goods or merchandize of the value of 40 s. in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging thereto, from or off any wharf or key adjacent to any navigable river, port of entry or discharge, or shall be present or assisting therein, shall be guilty of felony without benefit of clergy.

And by the 2 G. 3. c. 28. Persons navigating bum boats on the river *Thames*, for the purpose of selling liquors, sops, tobacco, fruit, greens, gingerbread, or other such like ware, except such boats as shall be entered at *Trinity House*; and persons taking in exchange, or by way of barter, or unlawfully receiving any ropes, cordage, tackle, goods, stores, or merchandize of any vessels in the river; or cutting, damaging, and spoiling any cordage, cable, buoys, buoy rope, headstap, or other fast or rope belonging to any ship in the river, with intent to steal the same; shall be punished as in the said act is directed: which act being somewhat long, and only local, it is thought fit to refer to the act itself for a more particular description of the offences, and for the manner of conviction and punishment.

VII. Other larcenies.

There are moreover divers other larcenies, which are not here specified, the same being inserted under the several titles in this book, to which they do more properly belong. That is to say,

Larceny in stealing woollen cloth off the tenters in the night time, is inserted under the title *Woollen Manufacture*.

Larceny in stealing linen, fustian, callico, or cotton cloth,

cloth, yarn, or goods laid to be printed, bleached, or dried, to the value of 10 s. under the title *Linen cloth*.

Larceny in stealing cattle or sheep (with a reward of 10 l. for convicting an offender), under the titles *Cattle* and *Sheep*.

Larceny in stealing deer in parks, conies or hares in warrens, or fish in ponds, under title *Game*.

Larceny in stealing hawks or swans, also under title *Game*.

VIII. Receiving stolen goods.

Receiver deemed an accessory.

By the 3 *W. c.* 9. If any person shall buy or receive any stolen goods, knowing the same to be stolen; he shall be deemed an accessory after the fact, and suffer accordingly. *s.* 4.

Receiving stolen goods, or harbouring a felon.

By the 5 *An. c.* 31. If any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour, or conceal any felons or thieves, knowing them to be so, he shall be deemed accessory to the felony, and being convicted on the testimony of one witness, shall suffer death as a felon convict. (But within clergy.) *s.* 5.

And by the 4 *G. c.* 11. Persons convicted of receiving or buying stolen goods knowing them to be stolen, may be transported for 14 years. *s.* 1.

In the case of *K. and Davidson*, at *Carlisle* assizes, 1766, *Margaret Davidson* was indicted for stealing bags containing 160 l. in money out of a dwelling house, and *Isabel* and *Margaret Carter* were indicted in one count for receiving the money, knowing it to have been stolen; and in a second count for harbouring and concealing *Margaret Davidson*, knowing her to have been guilty of that felony; and an objection being made that money is not within the acts of parliament relating to receivers of *stolen goods*, the judge (*Mr. J. Bathurst*) was clearly of that opinion, and that the counsel for the prosecutor should therefore apply their evidence only to the charge of harbouring and concealing the felon. They were all convicted, and the principal received judgment of death, and the accessories had their clergy, and were burned in the hand.

Can be no accessories in petit larceny.

In the case of *Abraham Evans*, at the sessions at the *Old Bailey* in May 1749, *John Avery* and *Abraham Evans* were indicted, *Avery* for privately stealing from the person of *Sir Giles Payne*, one silk handkerchief, value 12 d.; and *Evans* for feloniously receiving the same, knowing it to be stolen. *Avery* was found guilty to the value of 10 d. and

and was ordered to be transported for seven years. *Evans* was likewise convicted of receiving the goods, knowing them to be stolen; but judgment was respited as to him, upon a doubt whether sentence for transportation for 14 years can be given against him upon the statute of the 4 G. in regard the principal felon is found guilty of petty larceny only. And at a meeting of the judges to consider of this doubt, they were all of opinion that no judgment can be given against *Evans* on this verdict. For though the act is express, that persons convicted of buying or receiving stolen goods, knowing them to be stolen, shall be transported for 14 years, yet still it must mean persons legally convicted, persons convicted as accessaries after the fact under the statutes of the 3 W. and 5 An. But this man ought to have been acquitted, the principal felon being convicted of petty larceny only. And indeed the indictment against *Avery* being for petty larceny, *Evans* ought not to have been put upon his trial. For the acts which make receivers of stolen goods knowingly, accessaries to the felony, must be understood to make them accessaries in such cases only where by law an accessary may be; and there can be no accessary to petty larceny. Accordingly, at the next sessions, *Evans* was discharged. *F. 74.*

And notwithstanding that regularly the accessary cannot be tried, till the principal be convicted, yet by the 5 An. c. 31. it is enacted, that if the principal felon cannot be taken, so as to be prosecuted and convicted, yet nevertheless the buyer and receiver of stolen goods may be prosecuted as for a misdemeanor, and punished by fine and imprisonment, or other such corporal punishment as the court shall think fit; which shall exempt him from being punished as accessary, if the principal shall be afterwards taken and convicted. *f. 6.*

Receiver how punishable when the principal cannot be found.

In the case of *K. and Wild*, there was an indictment for a misdemeanor, in receiving stolen goods, knowing them to be stolen. Upon the prosecutor's evidence it appeared that the felons had been convicted and executed. Whereupon it was objected that this indictment would not lie, being only given in case where the felon cannot be taken, this being only a jurisdiction given under those particular circumstances. And of that opinion was the chief justice, and the defendant was acquitted. *Strange, 57. (8vo. edit.)*

Where the principal hath been executed.

By the 29 G. 2. c. 30. Whereas the pernicious practice of stealing lead, iron, copper, brass, bell-metal, and solder, fixed to, or lying or being in or upon houses, out-houses, mills,

Receivers of stolen lead, &c.

mills, warehouses, workshops, and other buildings, areas, vaults, yards, gardens, orchards, or other places; and also the stealing of such materials from ships, boats, and other vessels, and from off wharfs, keys, and other places, is become a great evil, by reason of the difficulty in apprehending and convicting the thieves, and in discovering the buyers and receivers; it is therefore enacted, that every person who shall buy or receive any of the same, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal, or solder, by suffering any door, window, or shutter to be left open or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive any of the same at any time in any clandestine manner; shall, on conviction by due course of law, although the principal felon hath not been convicted, be transported for 14 years. *f. 1.*

Suspected places
may be searched.

And one justice on complaint on oath by any credible person, that there is cause to suspect that stolen lead, iron, copper, brass, bell-metal, or solder, is concealed in any dwelling house, outhouse, yard, garden, or other place, may by his warrant cause such place to be searched in the day time; and if any of the same, suspected to be stolen, shall be found therein, may cause the same, and the person in whose house or other place the same shall be found, to be brought before two justices: And if such person shall not give an account, to the satisfaction of such justices, how he came by the same, or shall not in some convenient time to be set by the said justices produce the party of whom he bought or received the same, he shall be adjudged guilty of a misdemeanor. *f. 2.*

Suspected persons
may be apprehended.

And every constable within his constablewick, beadle within his district, and watchman whilst he is upon duty, shall apprehend or cause to be apprehended every person who may reasonably be suspected of having, carrying, or conveying, after sun-setting and before sun-rising, any of the said materials, suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before two justices: And if the person so apprehended conveying the same, shall not produce the person from whom he bought or received the same, or some other credible witness to depose upon oath the sale or delivery thereof, or shall not give an account, to the satisfaction of such justices, how he came by the same, he shall be adjudged guilty of a misdemeanor. *f. 3.*

In

In either of which cases, two justices may cause the said materials to be deposited with the churchwardens or overseers of the poor where the same were found, or in any other convenient place, for any time not exceeding 30 days, and in the mean time may order the said churchwardens or overseers, or one of them, in every parish within the bills of mortality, to insert an advertisement in some publick paper; and elsewhere cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where deposited: And if any person can prove his property thereto, upon oath, to the satisfaction of such two justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing, and giving publick notice of the same. And if at the end of the 30 days, no person shall prove his property thereto, the same shall be sold for the best price that can reasonably be had; and after deducting the charges as aforesaid, half of the money arising from such sale shall be given to the person apprehending, and half to the poor of the parish where the offence shall be committed (if it is known where), or else where the conviction shall be. *f. 4.*

Materials found to be deposited.

And every person to whom any of the same shall be brought and offered to be sold, pawned, or delivered (there being reasonable cause to suspect that the same was stolen or unlawfully come by), shall apprehend, secure, and carry before a justice (having it in his power so to do) the person so bringing or offering the same, together with the said materials; and such person shall be dealt with, and the said materials shall be deposited and disposed of, as if he had been apprehended by the constable, beadle, or watchman: And if it shall appear upon the oath of any person, notwithstanding he was concerned in stealing the same, if corroborated with other credible circumstances, to the satisfaction of two justices, that there was reasonable cause to suspect that the same was stolen or unlawfully come by, and that the person to whom the same was brought or offered did not (having it in his power so to do) apprehend, secure, and carry before a justice the person who brought or offered the same; then the person to whom the same was brought or offered, shall be adjudged guilty of a misdemeanor. *f. 5.*

Offering to sell suspected articles.

And persons for the two former misdemeanors, in having or carrying any of the said goods, shall forfeit for the first offence 40 s. for the second 4 l. and for every subsequent offence 6 l.; and for the other misdemeanor, in not carrying a suspected person before a justice, shall forfeit for

Penalties.

for the first offence 20 s. for the second 40 s. and for every subsequent offence 4 l.; by distress: half to the informer; and half to the overseers for the use of the poor where the offence was committed (if known), or otherwise where the conviction shall be. And if no sufficient distress shall be found, then to be committed to the common gaol or other prison or house of correction for one month for the first offence, for the second two months, and for every subsequent offence till discharged by order of sessions. *f. 6.*

Conviction.

The conviction to be on parchment, and to be certified to the next sessions, and there filed; in the form or to the effect following, *viz.*

Middlesex, *BE it remembered, that on the ——— day of ——— to wit. ——— in the year ——— A. O. was convicted before us ——— of the justices of the peace for ——— of a misdemeanor, in having in his possession lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he bought or received the same, nor giving a satisfactory account how he came by the same: [or, in having, carrying, or conveying of lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by, and not producing the party or parties from whom he bought or received the same, nor any credible witness to depose upon oath the sale or delivery thereof, and not giving a satisfactory account how he came by the same; or, of neglecting to apprehend and secure the person who brought and offered to pawn, sell, or deliver lead, iron, copper, brass, bell-metal, or solder, suspected to be stolen or unlawfully come by; as the case shall be:] Given under our hands and seals the day and year aforesaid.*

Certiorari.

Which conviction shall not be liable to be removed by certiorari, but shall be final to all intents and purposes *f. 7.*

Principal convicting two receivers.

And if any person, being out of prison, shall commit any felony by stealing any of the said materials, and afterwards discover two or more persons who shall buy or receive any of the same, knowing the same to be stolen, so as two or more be convicted, he shall have a pardon, which shall also be a bar to an appeal. *f. 8.*

And if any person shall be concerned in stealing any of the same, and shall afterwards, being out of prison, discover any person to whom he offered to sell, pawn, or deliver the same, so as he be convicted of such misdemeanor; he shall not be liable to be prosecuted for such stealing. *f. 9.*

By

By the 21 G. 3. c. 69. Every person who shall buy or receive any pewter pot or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen or unlawfully come by; or shall privately buy or receive any stolen pewter, by suffering any door, window, or shutter to be left open or unsfastened between sun-setting and sun-rising; or shall buy or receive the same in any clandestine manner; he shall, although the principal felon has not been convicted, be transported not exceeding seven years, or detained in prison and therein kept to hard labour not more than three years nor less than one; and within that time (if the court shall think fitting), to be once or oftner, but not more than thrice, publicly whipped.

Receiver of pewter, &c.

Finally, By the 22 G. 3. c. 58. Where any goods (except lead, iron, copper, brass, bell-metal, and solder) shall have been stolen, whether the offence amounts to grand larceny or some greater offence, or to petty larceny only where the offender has been convicted of grand larceny or some greater offence; every person who shall buy or receive the same, knowing them to have been stolen, shall be guilty of a misdemeanor, and punished by fine, imprisonment, or whipping, as the court of quarter sessions (who are hereby empowered to try him), or any other court before whom he shall be tried, shall think fit to inflict, although the principal be not convicted; and if the felony amounts to grand larceny, or some greater offence, and the person actually committing such felony hath not been before convicted, such offender shall be exempted from being punished as accessory, if the principal shall be afterwards convicted. *f. 1.*

Buying or receiving stolen goods.

And one justice, on oath before him made, that there is reason to suspect that stolen goods are knowingly concealed in any house or other place, may by his warrant cause such house or place to be searched in the day time; and the person concealing, or in whose custody the same shall be found, shall be guilty of a misdemeanor, and punished in the manner aforesaid. *f. 2.*

Searching suspected places.

And every constable within his constablewick, beadle within his ward, and watchman whilst on duty, may apprehend any person, who may be reasonably suspected of having or carrying at any time after sun-setting and before sun-rising any goods suspected to be stolen, and carry him before a justice to be dealt with according to law; and on conviction of the offence, he shall be adjudged guilty of a misdemeanor, and imprisoned not exceeding six calendar months, nor less than three. *f. 3.*

Constable may apprehend suspected persons.

And

Discovering two accomplices.

And if any person being out of custody, or in custody if under 15 years of age, upon any charge of felony within the benefit of clergy, shall have committed any felony, and afterwards discover two or more who have bought or received any stolen goods, so as two or more be convicted, he shall have the king's pardon for all such felonies by him committed before such discovery, which also shall be a bar to an appeal. *f. 5.*

IX. Offering goods suspected to be stolen, to be pawned or sold.

By the 30 G. 2. c. 24. If any person who shall offer by way of pawn, pledge, exchange, or sale, any goods, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof; or if there shall be any other reason to suspect that such goods are stolen, or otherwise illegally or clandestinely obtained, it shall be lawful for any person, his servants or agents, to whom the same shall be offered, to seize and detain such person and the said goods, and to deliver him as soon as conveniently may be into the custody of the constable or other peace officer, who shall immediately convey such person and the said goods before a justice; and if such justice shall upon examination and inquiry have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, he may commit him to safe custody for any time not exceeding six days in order to be further examined; and if upon either of the said examinations it shall appear to the satisfaction of such justice, that the said goods were stolen, or illegally or clandestinely obtained, he shall commit the offender to the common gaol or house of correction, there to be dealt with according to law. *f. 7.*

Provided, that if such goods so seized and detained as aforesaid shall afterwards appear to be the property of the person who offered the same to be pawned, exchanged, or sold, or that he was authorized by the owner thereof to pawn, exchange, or sell the same; yet nevertheless the person who shall so seize or detain the party who offered the said goods, shall be indemnified for having so done. *f. 8.*

And by 22 G. 3. c. 58. Any person, to whom any goods reasonably suspected to be stolen, shall be offered to be sold or pawned, may apprehend the person offering the same, and carry him before a justice. *f. 4.*

X. Advertising or receiving a reward for helping to stolen goods.

By the 25 G. 2. c. 36. If any person shall publicly advertise a reward, with no questions asked, for the return of things stolen or lost, or shall make use of words therein purporting that such reward shall be given, without seizing or making enquiry after the person producing such things; or shall offer to return to any pawnbroker, or other, the money lent thereon, or other reward for the return thereof; he, and also the printer and publisher of such advertisement, shall respectively forfeit 50 l. with costs, to him who shall sue in six months.

And by the 4 G. c. 11. Wherever any person taketh money or other reward, directly or indirectly, under pretence, or upon account of helping any person to any stolen goods; he shall (unless he apprehend the felon; or cause him to be apprehended, and brought to trial, and give evidence against him) be guilty of felony in the same manner as if he had stolen the same. s. 4.

XI. Charges of prosecution and conviction how to be paid.

By the statutes of the 3 J. c. 10. and the 27 G. 2. c. 3. The offender, if able, shall pay his own charges for carrying to gaol, and of those who guard him thither; and if he is not able, then the treasurer shall pay the same out of the county rates; as is shewn more at large in title Commitment.

Offenders to pay their own expences if able,

By the 25 G. 2. c. 36. The court before whom any person hath been convicted of any grand or petit larceny or other felony, may at the prayer of the prosecutor, and on consideration of his circumstances, order the county treasurer to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble: and the clerk of assize, or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on payment of 1 s. and the treasurer shall pay the same on sight, which shall be allowed in his accounts.

Prosecutor (if poor) to be allowed his expences.

And by the 18 G. 3. c. 19. The court before whom any person hath been tried and *convicted* of any grand or petit larceny or other felony; or before whom any person hath been tried and *acquitted* of any grand or petit larceny or other felony, in case it shall appear to the said court that

there was a reasonable ground of prosecution, and that the prosecutor had *bona fide* prosecuted; may order the treasurer to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expences he was *bona fide* put unto, making also (if he shall appear to be in poor circumstances) a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace respectively, shall forthwith make out and deliver to him, on being paid for the same 1 s. and no more; and the treasurer upon sight of the order shall forthwith pay the same. — And the justices in sessions, from time to time, may lay down or alter such rules and regulations concerning any costs or charges to be allowed to any person by virtue of this act: Which rules and regulations, having received the approbation and signature of one or more of the judges of assize, shall be binding, and not otherwise, on all persons whatsoever.

Witnesses also to
be paid.

By the aforesaid act of the 27 G. 2. c. 3. When any poor person shall appear on his recognizance, in such case to give evidence, the court may allow him his reasonable charges, to be paid in like manner by the treasurer; the proper officer to have 6 d. for making out the order. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

And by the 18 G. 3. c. 19. The court, where any person shall appear on *recognizance* or *subpœna*, to give evidence as to any grand or petit larceny or other felony, whether any bill of indictment be preferred or not, may order the treasurer to pay to him such sum as they shall think reasonable, not exceeding the expences he was *bona fide* put unto, making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or of the peace respectively shall forthwith make out and deliver to him, on being paid for the same 6 d. and no more; and the treasurer upon sight of the order shall forthwith pay the same.

Warrant for larceny.

Westmorland. { To the constable of —

FORASMUCH as A. I. of — in the county of — yeoman, hath this day made information and complaint upon oath before me — one of his majesty's justices of the peace for the said county, that this present day divers goods of him the said A. I. to wit, — have feloniously been stolen, taken, and carried away from the house of him the said A. I.

at

at ——— aforesaid in the county aforesaid, and that he hath just cause to suspect, and doth suspect, that A. O. late of ——— yeoman, feloniously did steal, take, and carry away the same: These are therefore to command you forthwith to apprehend him the said A. O. and to bring him before me to answer unto the said information and complaint, and to be further dealt with according to law: Herein fail you not. Given under my hand and seal the ——— day of ——— in the year ———

Note; The form of a warrant to search for stolen goods is inserted under the title *Search warrant*.

Indictment for grand or petit larceny in general.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of ——— in the county of ——— labourer, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— in the county aforesaid, one linen sheet of the value of ——— of the goods and chattels of one A. I. then and there being, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Indictment for picking of pockets, or otherwise privately stealing from the person.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of ——— in the parish of ——— yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at the parish aforesaid in the county aforesaid, one silver watch of the value of ——— of the goods and chattels of one A. I. from the person of the said A. I. subtilly, privately, craftily, and without the knowledge of the said A. I. then and there feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time, some person being therein.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of ——— in the county of ——— labourer, on the ——— day of ——— in the ——— year of the reign of ——— at the hour of ——— in the afternoon of the same day, with force and arms, at ——— in the county of ——— the dwelling house of

Larceny.

of one A. I. there situate, (one B. I. wife of the said A. I. in the same house in the peace of God and of our said lord the king then being,) feloniously did break and enter, and one silver spoon of the value of — of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away, and her the said B. I. then and there in bodily fear and danger of her life feloniously did put; against the peace of our said lord the king, his crown and dignity.

Indictment for breaking a house in the day time,
no person being therein.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of — on the — day of — in the — year of the reign of — at the hour of — in the afternoon of the same day; with force and arms, at — in the county aforesaid, the dwelling house of one A. I. there situate, feloniously did break and enter, and one silver spoon of the value of — of the goods and chattels of him the said A. I. then and there feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Indictment for stealing of goods out of a shop,
warehouse, coach-house, or stable.

Westmorland. **T**HE jurors for our lord the king upon their oath present, That A. O. late of — in the county aforesaid, labourer, on the — day of — in the — year of the reign of — with force and arms, at — in the county aforesaid, one piece of cloth of the value of — of the goods and chattels of one A. I. in the shop of him the said A. I. then and there being found, then and there privately and feloniously did steal, take, and carry away; against the peace of our said lord the king, his crown and dignity.

Leather.

Concerning the duties on leather, See title *Excise*.

THERE are several statutes unrepealed, which were made before the first year of the reign of James 1st, concerning leather; but the act made in that year renders them all useless, the same being intended to reduce all the acts into one relating to that commodity; which
same

something was attempted in that king's reign, with success, in divers other articles.

Therefore in this title I shall go no further back than the statute of the 1 J. c. 22. And to avoid abundance of repetitions, I will first insert the methods of recovering the several penalties, and will then proceed with this article in its several progresses, in the order of time, from the first flaying off the hide, to its being at last sold and manufactured in leather, or exported.

- I. *General penalties and forfeitures under this title.*
- II. *Of hides before they come to the tanner.*
- III. *Of the tanning of hides.*
- IV. *Of the currying of hides.*
- V. *Of the searching and sealing of leather.*
- VI. *Of the triers of leather.*
- VII. *Of the selling and registering of leather.*
- VIII. *Of the manufacturing of leather, or exporting it.*

I. *General penalties and forfeitures under this title.*

All forfeitures by the act of the 1 J. c. 22. not hereafter otherwise specially directed, shall be divided one third to the king, one third to him that shall sue, and one third to the city, town, or lord of the liberty. 1 J. c. 22. s. 46.

Money and goods forfeited by the 1 J. how to be distributed.

And all leather, shoes, or other things made of tanned or curried leather, seized and condemned by the triers hereafter mentioned, by the said statute of the 1 J. c. 22. if in London, shall be brought to Guildhall, and prized by indifferent persons, and the value thereof divided, one third to the seizer, one third to the chamber of London, and one third to such poor as the mayor and four aldermen shall appoint: If in any other city, town, or place, they shall be brought to the common hall of such town, or to some convenient and open place to be appointed by the lord of the liberty where no common hall is, there to be prized as aforesaid, and the value divided, one third to the poor and in other deeds of charity after the discretion of the mayor or lord of the liberty, one third to the mayor for the use of the commonalty, or to the lord of the liberty where there is no mayor or other such like officer, and one third to the seizer. 1 J. c. 22. s. 46.

And the above said forfeitures on the 1 J. may be sued for in any court of record, by action of debt, bill, plaint, or information, or otherwise. *id.*

Forfeitures on the 1 J. and on the 9 Ann. how to be recovered

And likewise all justices of assize, justices of the peace, mayors, and stewards of leets, may inquire thereof in their sessions, leet, or law day, and hear and determine the same. *f. 50.*

And moreover by the 9 *An. c. 11.* Any two justices near where the forfeitures on the said act of the 9 *An.* shall be incurred, or offence committed, or where any offence shall be committed against the aforesaid act of 1 *7. c. 22.* may hear and determine the same; who shall on information or complaint, in three months after any seizure made or offence committed, summon the party accused, and the witnesses: and on appearance or contempt in not appearing (on proof of notice given) shall proceed to examine witnesses on oath, and give judgment, and issue warrants for levying the penalties, and cause the distress to be sold, if not redeemed in six days. And if either party is not satisfied with the judgment, he may appeal to the next sessions, who shall determine the same, and in case of conviction, issue warrants for levying the penalties. *f. 36.*

Forfeitures on
the 13 & 14
C. 2. c. 7.

All forfeitures and sums by the act of the 13 & 14 *C. 2. c. 7.* shall be recovered in any court at *Westminster*, or in any court of record in the city, town, county, or place where the offence shall be committed; to be distributed half to the king, and half to the informer. *f. 10.*

II. Of hides before they come to the tanner.

Gashing hides.

If any raw hide or calf skin shall wilfully or negligently be gashed or cut in slaying, or being gashed or cut shall be offered to sale; the butcher or other person who impaired the same, or the person offering the same to sale, shall forfeit 2 s. 6 d. for every hide, and 1 s. for every calf skin; half to the poor of the parish where it is found or offered to sale, and half to him that shall sue. 9 *An. c. 11. f. 11.*

Watering hides.

No butcher shall water any hide, except in *June, July,* and *August*; on pain of 3 s. 4 d. 1 *7. c. 22. f. 2.*

Rotten hides.

No butcher shall offer any hide to sale, being putrefied; on pain of 3 s. 4 d. *id.*

Who may buy
hides.

None but tanners shall buy any rough hide or skin (except salt hides for the use of ships); on pain of forfeiting the same, or the value thereof. *f. 7.*

III. Of the tanning of hides.

Who may be a
tanner.

No person shall be a tanner, but who hath served seven years, except the wife or such son of a tanner as hath used the trade four years, or the son or daughter of a tanner, or such person who shall marry such wife or daughter to whom

whom he shall leave a tan house and fats; on pain of forfeiting all such leather by him tanned, or of which he shall receive any profit, or the value thereof. 1 *J. c.* 22.

f. 5.

No tanner shall be a butcher, on pain of 6 s. 8 d. a day.

f. 4.

No tanner shall be of any craft exercised in the cutting or working of leather; on pain of forfeiting the same, or the value thereof. *f. 6.*

No person shall fell any oak trees, meet to be barked, where bark is worth 2 s. a cart load, over and above the charges of barking and pilling (except timber for houses, ships, or mills) but between *April 1*, and *June 30*; on pain of forfeiting the same, or double value thereof. *f. 20.* Oak bark.

No purveyor of timber shall fell for the king's use, any oak timber tree meet to be barked, but in barking time (except for the king's houses or ships); or shall receive any profit by any lops, tops, or bark of trees to be taken by them; or shall take or dispose from the owner, any more of any tree so to be taken, than only the timber thereof to be used only about the king's buildings or ships: on pain of forfeiting to the party grieved, for every tree, and for the lops, tops, and bark of every tree, 40 s. And the owner may withhold any bark, lop, or top, any commission or other matter notwithstanding. *f. 21.*

No tanner shall suffer any hide or skin to lie in the limes till they be over limed; nor shall put them into any tan fats, before the lime be perfectly fokened and wrought out of them; nor shall use in the tanning thereof any thing but ash bark, oak bark, tap wort, malt, meal, lime, culver dung, or hen dung; nor shall suffer it to lie wet till it be frozen; nor shall dry it by the fire, or summer sun; nor shall tan any hide or skin putrefied or rotten; nor shall suffer the hides for utter sole leather to lie in the woozes less than 12 months, nor the hides for upper leathers less than nine months; nor shall negligently work the hides in the woozes, but shall renew and make strong their woozes, as often as shall be requisite; nor shall put to sale any leather tanned in any other sort than by this statute is limited: on pain of forfeiting every hide or skin tanned and offered to sale contrary to this act, or the value thereof. *f. 11.*

Manner of tanning.

No tanner shall raise with any mixtures any hide to be converted to backs, bend leather, clouting leather or any other sole leather, except they be for largeness, stare, and growth fit for that purpose, to be tried by the triers hereafter mentioned; on pain of forfeiting the same. 1 *J. c.* 22. *f. 12, 13.*

No person shall set the fats in tan hills, or other places, where the woozes or leather may take any unkind heats; or shall put any leather into any hot or warm woozes; or shall tan any hide or skin with any hot or warm woozes; on pain of 10 l. and the pillory on three market days in the next market town. *f. 16, 17.*

If any tanner or other person shall shave or cause to be shaved any hide or calf skin, before it be thoroughly tanned, whereby it shall be impaired; he shall forfeit the same or the value, half to the king, and half to him that shall sue. *9 An. c. 11. f. 12.*

Every tanner, who shall shave, cut, and rake the upper leather hides all over, or the necks of their backs and butts; shall forfeit the same or the value thereof, and the searchers and sealers hereafter mentioned may seize them. *13 & 14 C. 2. c. 7. f. 8.*

If any tanner shall offer to sale any leather not thoroughly tanned or dried, to the satisfaction of the triers; he shall forfeit so much as shall be so deficient, whether whole hides or part thereof. *1 J. c. 22. f. 15.*

IV. Of the currying of hides.

Who may be a currier.

No currier shall be a tanner, shoemaker, butcher, or other artificer using cutting of leather; on pain of forfeiting 6 s. 8 d. for every hide he shall curry during the time that he shall occupy any of the said miseries. *1 J. c. 22. f. 25.*

Leather delivered to the currier.

Every artificer dealing in cutting of leather, or other person, who shall buy any red tanned leather, within *London*, or three miles thereof, shall before the next market day for sale of leather, give notice thereof to one of the curriers company, and in three weeks after shall deliver the leather so bought (except what shall be used for soles without being curried, tallowed, or dressed) to the said currier, to be curried, tallowed, or dressed; on pain of 6 s. 8 d. for every back, butt, hide, or calf skin. *13 & 14 C. 2. c. 7. f. 13.*

In what time he shall curry it.

No currier shall refuse to curry any leather to him brought by any artificer being a cutler of leather, and bringing with him sufficient stuff for the perfect liquoring the same, with as convenient speed as may be, not exceeding eight days in summer and sixteen in winter, in the presence of the said artificer, if he will be present, otherwise in his absence; on pain of forfeiting to the party grieved for every hide or piece of leather not in this manner curried, and well and speedily dressed, 10 s. *1 J. c. 22. f. 26.*

And

And by the 12 G. 2. c. 25. If any currier shall refuse to curry any leather brought or sent to him by any person dealing or working in leather, or shall neglect to curry the same in 16 days between Sept. 28, and March 25, and in 8 days in the remaining part of the year; he shall, on conviction before one justice, on the oath of one witness, forfeit any sum not exceeding 5 l. by distress; half to the informer and half to the poor. Persons aggrieved may appeal to the next sessions. *f. 4, 5, 6.*

No person shall curry any leather in the house of any shoemaker or other person, but only in his own house situate in a corporate or market town; nor shall curry any leather except it be perfectly tanned; nor shall curry any hide or skin being not thoroughly dry after his wet season; in which wet season he shall not use any stale urine, or any other deceitful or subtle mixture or means to hurt the same; nor shall curry any leather meet for utter sole leather, with any other stuff than with hard tallow, nor with any less of that than the leather will receive; nor shall curry any leather meet for over leather, and inner soles, but with sufficient stuff, being fresh and not salt, and thoroughly liquored till it can receive no more; nor shall burn or scald any hide or leather in the currying; nor shall shave any leather too thin, nor shall gash or hurt any leather in the shaving, or by any other means; but shall work the same sufficiently in all points: on pain of forfeiting for every such offence (other than in gashing or hurting in shaving) 6 s. 8 d. and the value of such skin or hide marred by his evil workmanship; and for every offence in gashing or hurting by shaving, double so much to the party grieved, as the leather shall be impaired thereby, by the judgment of the wardens of the curriers, and of the warden of the company whereof the party grieved shall be. *1 J. c. 22. f. 22.*

Manner of currying it.

V. Of the searching and sealing of leather.

The mayor and aldermen of London (on pain of 40 l. for every year they make default, half to the king, and half to him that shall sue) shall yearly appoint 8 freemen of some of the companies of cordwainers, curriers, sadlers, or girdlers (whereof one shall be a sealer and keep a seal for the sealing of leather); who shall be sworn before them to do their office truly: And they shall search and view all tanned leather brought to market, whether it is thoroughly tanned and dried; and if it is, shall seal the same. *1 J. c. 22. f. 31.*

Searchers and sealers in London.

And

And four of the said searchers shall be removed at the end of the year, and four new ones chosen; and no one shall continue in the office above two years together, nor shall be employed again till after the end of three years; on pain of 10 l. a month. *f. 36.*

In other places.

And all mayors, and lords of liberties, fairs, and markets, out of the compass of three miles from *London*, shall (on like pain of 40 l.) appoint and swear yearly two, three, or more honest and skilful men, to be searchers within their precincts; who shall search as often as they shall think good, or need shall be, and shall seal what they find sufficient: And if they find any leather offered to be sold, or brought to be sealed, which shall be insufficiently tanned or curried, or any boots, shoes, bridles, or other thing made of tanned or curried leather, insufficiently tanned, curried, or wrought, they may seize and keep the same, till they be tried by the triers. *f. 32.*

Fee for sealing.

The wardens of the curriers shall search and try all such curried leather as shall be brought to any of their company to be curried, and shall with a seal therefore to be prepared, with convenient speed, not exceeding one day after the currying and request made, seal such leather as they shall find sufficiently curried; taking for every hide so sealed after the rate of one penny for the dicker, and for every six dozen of calf skins one penny, to be paid by the currier: on pain of forfeiture for every hide not searched and sealed 6 s. 8 d. *f. 27.*

But they shall not visit, search, or seize any leather, hide, or skin, but such as shall be curried or dressed within *London* or three miles thereof, by some member of their own company, nor in any other place but in the open market, or in the shops, houses, or warehouses of such curriers. *1 W. sess. 1. c. 33. f. 4.*

Penalty on the searcher or sealer misbehaving.

If any searcher or sealer shall refuse with convenient speed to seal any leather which is sufficient, or do allow that which is insufficient; he shall forfeit 40 s. If he shall receive any bribe, or exact any other fee than by this act is appointed, he shall forfeit 20 l. And if he shall refuse to execute his office, he shall forfeit 10 l. *1 J. c. 22. f. 37.*

Penalty on hindering the searcher.

If any person shall deny, or withstand, or not suffer the searching or seizing of insufficient wares, he shall forfeit 5 l. *f. 40.*

VI. Of the triers of leather.

Triers in London.

The mayor of *London* (on pain of 5 l. half to the king, and half to him that shall sue) shall within six days after notice

notice given to him of any seizure of any leather, red and unwrought, appoint six triers, two of the cordwainers company, two of the curriers, and two of the tanners using *Leadenhall* market; who upon their oaths to be taken before him, shall on the second or third market day for leather (to be holden on *Tuesday*, 13 & 14 C. 2. c. 7. f. 9.) in the afternoon try whether the same be sufficient or not. 1 f. c. 22. f. 33. 35.

Every other mayor, or lord of liberty, out of the compasses of three miles from *London*, within whose precincts any seizure of any tanned leather, red or curried, or of any shoes, boots, or other wares made of tanned leather shall be, shall (on like pain) with all convenient speed after notice given to him of such seizure, appoint six honest and expert men, to try whether the same be sufficient or not; the same trial to be openly on some market day, and within 15 at the farthest from the time of the seizure, upon the oaths of the said triers. f. 34.

In other places.

Triers not doing their duty, shall forfeit 5 l. f. 35.

Triers misbehaving.

VII. Of the selling and registering of leather.

No person shall put to sale any tanned leather red and unwrought, but in open fair or market, unless the same hath been first searched and sealed; nor shall offer to sale any tanned leather red and unwrought before it be searched and sealed; on pain of forfeiting the same, or the value thereof, and also for every hide or piece 6 s. 8 d. and for every dozen of calves skins 3 s. 4 d. 1 f. c. 22. f. 14.

Selling unsealed.

But no person shall incur any penalty for selling or buying any sheep skins unsearched or unsealed. 4 f. c. 6. f. 2.

All red tanned leather shall be bought only in the open fair or market, and not in any house, yard, shop, or other place; on pain of forfeiting the same, or the value thereof, and the contract to be void. And all such leather shall be searched and sealed before sale, and on sale shall be registred, and an entry made both by the buyer and seller, both being present, and their names and dwellings entred into the book of the register; on pain that every such buyer or seller who shall make default, shall forfeit the same or the value thereof. 13 & 14 C. 2. c. 7. f. 4.

Where to be sold and registred.

Searchers and sealers shall keep a register, wherein they shall enter all bargains made for leather, hides, or skins, during the fair or market, being thereunto required by the buyer or seller, with the prices; taking for searching, sealing, and registering of every ten hides, backs, or butts, of the seller,

Fee for registering.

seller, 2d. and so after the same rate; and for every six dozen of calves skins or sheep skins, 2d. and of the buyer after the same rate. 1 *J. c. 22. f. 41.*

Registering in
London,

All red tanned leather which shall be brought into *London*, or within three miles thereof, shall be brought to *Leadenhall* before it be housed, and there viewed whether it hath been searched or sealed, and shall be registred by the searchers, with half such fees to be paid for such of the said tanned leather as shall be bought out of *London*, or three miles compass from the same, and searched and sealed before it be brought within the city; on pain that every person housing or not bringing his leather to *Leadenhall* as aforesaid, shall forfeit for every hide or skin 6s. 8d. *f. 38.*

Buyer of leather
selling it again
unwrought.

By the 1 *J. c. 22.* No person shall buy any tanned leather unwrought, but who shall work the same into wares; on pain of forfeiting the same, or the value thereof. *f. 8.*

But by the 12 *G. 2. c. 25.* All persons who deal or work in leather, may buy all sorts of tanned leather in open fair or market; whether curried or uncurried, being first searched and sealed, and may cut and sell the same in any small pieces in their open shops. *f. 1.*

And by the 1 *W. sess. 1. c. 33.* All dealers or workers in leather may buy all sorts of red tanned leather in open fair or market, whether curried or uncurried, being first searched and sealed, and may sell it again in their open shops, or cut and convert it into other made ware. *f. 5.*

Where it may be
sold in London.

Within *London*, or three miles thereof, no person shall sell any wares appertaining to the mystery of any artificer cutting leather, but only in open shop, common fair, or market, whereby the wardens may have search thereof; on pain of forfeiting the same, and also 10s. 1 *J. c. 22. f. 45.*

VIII. Of the manufacturing of leather, or exporting it.

Shoemaker's
duty.

No shoemakers shall make any boots or shoes, or any part of them, of *English* leather wet curried (other than deer skins, calves skins, or goat skins made and dressed like *Spanish* leather), but of leather well and truly tanned and curried in manner aforesaid, or of leather well and truly tanned only, and well sewed, without mixing overleathers, that is to say, part being neats leather, and part calves leather; nor shall put into any part of any shoes or boots, any leather made of a sheep skin, bull hide, or horse hide;
not

nor in the upper leather of any shoes, or into the nether part of any boots (the inner part of the shoe only excepted) any part of any hide from which the sole leather is cut, called the wombs, necks, thanks, flank, powle, or cheek; nor shall put into the utter sole any other leather, than the best of the ox or steer hide; nor into the inner sole, any other leather than the wombs, neck, powle, or cheek; nor into the trefwells of the double soled shoes, other than the flanks of any of the hides aforesaid; nor shall make or put to sale between *September 30*, and *April 20*, any shoes or boots meet for any person above four years old, wherein shall be any dry *English* leather, other than calves skins or goat skins made or dressed like *Spanish* leather; on pain of forfeiting for every pair of shoes or boots 3 s. 4 d. and the value thereof. 1 *J. c. 22. f. 28.*

And if any shoemaker, saddler, or other artificer using of leather, do make any wares of any tanned leather insufficiently tanned, or of tanned and curried leather being not sufficiently tanned and curried; he shall forfeit the same, and the value thereof. *f. 44.*

Artificers working bad leather.

If any shoemaker or cobbler within *London* or three miles thereof, shall put any tanned leather into any boots or shoes, or other things made of tanned leather, which shall not be well and perfectly tanned, or do put any curried leather into boots or shoes or other things made of leather, which shall not be sufficiently tanned and curried, and also sealed; he shall forfeit the same, and the value thereof. *f. 44.*

Shoemakers in London.

And the master and wardens of the misteries of cordwainers, curriers, girdlers, and saddlers of *London* (on pain of 40 l. for every year they make default, half to the king and half to him that shall sue) shall once a quarter or oftner make search and view of all boots and shoes, and other wares made of tanned leather, within three miles of *London*, and if they are not truly wrought, they may seize and carry the same to the several common halls. *f. 29.*

Search in London for insufficient wares.

And by the 1 *W. jff. 1. c. 33. f. 3.* Every hide, skin, or piece of tanned leather shaved or liquored, of what colour soever, with any lawful liquor or dressing, and being well and truly curried, shall be deemed ware within the said statute of the 1 *J. c. 22.*

All sorts of leather and skins, tanned or dressed, may be exported. 20 *C. 2. c. 5. 9 An. c. 6. f. 4.*

Exportation.

Importing of leather gloves or mitts, See Gloves.

Leather.

Lecturer.

BY the 13 & 14 C. 2. c. 4. Lecturers in churches, unlicensed, and not conforming to the liturgy, shall be disabled, and shall also suffer three months imprisonment in the common gaol; and two justices (or the mayor in a town corporate) shall, upon certificate from the ordinary, commit them accordingly. *f.* 19—23.

Leet.

Meaning of the word.

LEET (*leth, lathe, lathe*) is of Saxon original, and seemeth to be no other than the court of the *lathe*; as the county court is the court of the county. For in ancient times the counties were subdivided into lathes, rapes, wapentakes, hundreds, and the like. And the sheriff twice a year performed his *torn* or perambulation, for the execution of justice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts. And from hence, these courts, holden within particular parts of the county, have descended unto us without variation, under the name of the *leet, leth, or lathe* courts.

Leet, what.

The court *leet* is a court of record, having the same jurisdiction within some particular precinct, which the sheriff's *torn* hath in the county. *2 Haw. 72.*

Leet derived from the torn.

For the leet, or view of frankpledge, was by the king (for the ease of the people) divided, and derived from the torn; who did grant to the lords to have the view of the tenants and resiants within their manors; so as the tenants and resiants should have the same justice that they had before in the torn done unto them, at their own doors, without any charge or loss of time. *2 Inst. 71.*

Frankpledge.

The institution hereof for keeping of the king's peace, was, that every freeman at his age of twelve years (except peers, clergymen, and tenants in ancient demesne, *2 Haw. 57.*) should in the leet if he were in any leet, or in the torn if he were not in any leet, take the oath of allegiance to the king; and that pledges or sureties should be found for his truth to the king, and to all his people, or else to be kept in prison: This frankpledge consisted most commonly of ten households, which the Saxons called *theothung*, in the north parts they call them *tenmentale*, in other places of England, *tithing*; whereof the masters of the nine families who were bound, were of the Saxons called *freoborgh*, which in some places is to this day

day called *freoborrow*, that is, free surety, or frankpledge, and the master of the tenth household was called *theothungman*, to this day in the west called *tiethingman*, and *tiithenheofed*, and *freoberber*, that is, *capitalis plegius*, chief pledge; and these ten masters of families were bound one for another's family, that each man of their several families should stand to the law, or if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decenna*, because it consisted most commonly of ten households; and every man of those several households, for whom the pledge or surety was taken, were called *decennarii*; which names are continued as shadows of antiquity to this day. 2 *Inst.* 73.

And by the due execution of this law, such peace was universally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; so as a man with a white wand might safely have ridden before the conquest, with much money about him, without any weapon, throughout *England*. 2 *Inst.* 73.

But no person is obliged to appear at any leet, within the precincts whereof he doth not reside. 2 *Haw.* 57.

He that claims a leet by charter, must hold it on the days prescribed by the charter; he that claims it by prescription, may claim to hold it once or twice every year, at any such days as shall upon reasonable warning be appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times, as by prescription hath been certainly used. 2 *Inst.* 72.

If a nuisance done within the jurisdiction of the leet, be not presented in the leet, the sheriff in his torn cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff, to inquire thereof. 4 *Inst.* 261.

It seems that a court leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace, who shall make an affray in his presence, sitting the court, or may commit him to ward, either for want of sureties, or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. 2 *Haw.* 4.

The leet hath power to receive indictments of felonies at the common law, but not of felonies by act of parliament, unless specially limited thereto. 2 *H. H.* 71.

Leet when to be holden.

Offences within the leet, not inquirable in the torn.

Steward may commit for an affray.

What felonies are cognizable in the leet.

Other publick offences.

Furthermore, this court hath cognizance of a great number of offences, both by the common law, and by statute; as for instance, tipling in alehouses; assaults whereby bloodshed ensueh; common barators; bawdy houses; defects in bridges and highways; destroyers of ancient boundaries; bakers; brewers; butchers; curriers; deciners or suitors not appearing in the leet; estrays, waifs, and treasure trove; eave droppers; forestallers, regrators, ingrossers; destroyers of game; gamesters; hedge breakers; neglecters of hue and cry; higlers; innholders; millers; night walkers; common nuisances; want of pillory and stocks, and common pounds; rescous; scolds; shoemakers; searchers of leather; stoned horses of two years old put on the common; victuallers; constables neglecting watch and ward; weights and measures; and many others by particular statutes. *Wood. b. 4. c. 1.*

Private offences.

But a man cannot be presented in the leet for furcharging the common, or for digging in the common; because this concerns the private, not the publick interest, and belongs rather to the court baron to inquire of it. *id.*

Within what time offences are cognizable. Constable chosen in the leet.

Also no offence is cognizable in the leet, unless it arose since the holding of the last court. *2 Haw. 66.*

Jurors.

The constables of common right are to be chosen and sworn in the leet or torn. *2 Haw. 62.*

The leet seems not to be within the equity of the statute of 1 R. 3. which requires that the jurors in the torn shall have 20 s. a year freehold, or 26 s. 8 d. copyhold or customary; for it is said, that any person happening to be present at the leet, or to be riding by the place where it is holden, may for the want of jurors be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court leet. *2 Haw. 69.*

Indictments to be indented.

Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward, to prevent embezilling. *id.*

Indictments of felonies how to be certified.

Although the leet may receive indictments of felony, yet it cannot hear and determine them, but must send them to the gaol delivery, there to be heard and determined, if the offenders are in custody; or remove them by certiorari into the king's bench, that process may be made upon them to outlawry. *2 H. H. 71.*

Traverse.

It seems to be agreed, that a presentment in the leet of any offence within the jurisdiction of the court, being neither capital nor concerning any freehold, subjects the party to a *fine or amercement* without any further proceeding.

ing, and admits of no traverse to the truth of it: But if it touch the party's freehold, it may be removed into the king's bench, and there traversed. 1 *Haw.* 217. 219. 2 *Haw.* 71.

A *fine* is a pecuniary punishment, assessed by the Fine. steward, for an offence or contempt committed in court, or by public officers out of court, in administration of their offices; a fine is always assessed by the steward, and is not to be assessed, though sometimes it is called an amer- ciamment; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt, for a fine imposed, but he cannot imprison. And this is the only court that can fine and not imprison. *Wood. b. 4. c. 1.* 2 *H. H.* 61.

An *americiament* is a pecuniary punishment, assessed Americiament. by the homage or jury, for offences committed out of court by private persons, to be mitigated by assessors (from *as- fesser*, to tax), who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute: and for this also the lord may have an action of debt, or may distrain of common right, and impound the distress, or sell it at his pleasure, but cannot imprison for it. *Wood. b. 4. c. 1.*

And upon presentment of a nuisance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it, under such a pain, with- out americing him at all: And on presentment at another court, that he hath not removed such nuisance (having had notice thereof) the pain may be recovered by distress or ac- tion of debt, without farther proceeding. 2 *Haw.* 61. Americiament, how recovered.

It seemeth that of common right any court leet, By-laws. with the assent of the tenants, may make by-laws under certain penalties, in relation to matters properly within the cognizance of such court, as the reparation of the highways, and the like: And also a court baron by custom may make by-laws, for the well regulating of commons, and such like private matters. And therefore where a court leet and baron are holden together, as they usually are, it seems, that what is transacted therein, in relation to publick mat- ters, shall be applied to the jurisdiction of the court leet, and what is done in relation to private matters, shall be in- tended to be done by the court baron. 2 *Haw.* 68.

The lord of the leet ought to have a pillory and tumbrel: Pillory and stocks. and for want thereof, he may be fined, or his liberty seized. *Cro. El.* 698.

Letter.

But the stocks are to be provided at the charge of the town; for originally they were not to punish, but to keep men in hold. *Wood. b. 4. c. 1.*

Business devolved on the sessions.

But the business of the leet hath declined for many years; and is devolved on the quarter sessions.

Letter.

Sending threatening letters.

BY the 9 G. c. 22. and 27 G. 2. c. 15. If any person shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money or other valuable thing; or threatening to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; tho' no money or venison or other valuable thing be demanded by such letter; or shall rescue any person in custody for such offence; he shall be guilty of felony without benefit of clergy.

And by the 30 G. 2. c. 24. All persons who shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with intent to extort from him any money or other goods, shall be punished at the discretion of the court by fine and imprisonment, pillory, whipping, or transportation for seven years.

Seditious or defamatory letters belong to title *Lshel.*

Opening or detaining letters. See *Post.*

Lewdness.

IF any offend their brethren by adultery, whoredom, incest, or any other uncleanness, the churchwardens shall present them to the ordinary, and they shall not be admitted to the holy communion, till they be reformed. *Can. 109.*

But altho' lewdness be properly punishable by the ecclesiastical law, yet the offence of keeping a bawdy house cometh also under the cognizance of the law temporal, as a common nuisance, not only in respect of its endangering the publick peace, by drawing together dissolute and debauched

bauched persons, but also in respect of its apparent tendency to corrupt the manners of both sexes. 3 *Inst.* 205. 1 *Haw.* 196.

And in general, all open lewdness grossly scandalous is punishable upon indictment at the common law. 1 *Haw.* 7.

And offenders of this kind are punishable not only with fine and imprisonment, but also with such infamous punishment as to the court in discretion shall seem proper. 1 *Haw.* 196.

And upon information given to a constable, that a man and woman are in adultery or fornication together, or that a man and woman of evil report are gone to a suspected house together in the night, the officer may take company with him, and if he find them so, he may carry them before a justice, to find sureties of the good behaviour. *Dalt. c.* 124. 2 *Haw.* 61.

For it seems always to have been the better opinion, that a man may be bound to his good behaviour, for haunting bawdy houses with women of bad fame, as also for keeping bad women in his own house. 1 *Haw.* 132.

And a wife may be indicted together with her husband, and condemned to the pillory with him, for keeping a bawdy house; for this is an offence as to the government of the house; in which the wife has a principal share; and also such an offence as may generally be presumed to be managed by the intrigues of her sex. 1 *Haw.* 2.

And if a wife go away, and remain with an adulterer without being reconciled to her husband, she shall lose her dower. 2 *Inst.* 435.

But if a person is indicted for frequenting a bawdy house, it must appear that he knew it to be such a house; and it must be expressly alledged that it is a bawdy house, and not that it is suspected to be so. *Wood. b.* 3. c. 3.

On an indictment for keeping a disorderly house, a female witness swore, that she was a sailor's wife, and during her husband's absence out of the realm she had often prostituted herself there: *L. Raymond* said, it was an odious piece of evidence, and ought not to be heard. *Barl. Bawdy-h.*

But it is said a woman cannot be indicted for being a bawd generally, for that the bare solicitation of chastity is not indictable. 1 *Haw.* 196. 1 *Salk.* 382.

Lewdness.

Indictment for keeping a disorderly house.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the said county, labourer, on the — day of — in the — year of the reign of — and at divers other times as well before as after, with force and arms, at — aforesaid, in the county aforesaid, did keep and maintain, and yet doth keep and maintain, a certain common, ill-governed and disorderly house, and in the said house, for his own lucre and gain, certain evil and ill disposed persons, as well men as women, of evil name and fame, and of dishonest conversation, to frequent and come together then, and the said divers other times, there unlawfully and wilfully did cause and procure: and the said men and women, in the said house, at unlawful times, as well in the night as in the day, then and the said other times, there to be and remain, drinking, tipling, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, and against the peace of our said lord the king, his crown and dignity.

Libel.

- I. What it is.
- II. Who are punishable for it.
- III. How punishable.

I. What it is.

A LIBEL is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead. Wood. b. 3. c. 3.

Ironical defamation.

[A malicious defamation] And the scandal which is expressed in a scoffing and ironical manner, is as properly a malicious defamation, as that which is expressed in direct terms; as where a person proposes one to be imitated for his courage, who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like: Which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities,

ties, as if it had directly and expressly done so. 1 *Haw.* 194.

And from the same foundation it hath also been resolved, Expressing one or two letters only of a name. that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: And it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. *id.*

And it matters not whether the libel be true, or whether the party against whom it is made be of good or bad fame; for in a settled state of government, the party grieved ought to complain, for any injury done to him, in the ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise, 5 *Co.* 125. But this is to be understood, when the prosecution is by information or indictment; but in an action on the case, which is to repair the party in damages, the defendant may justify the truth of the facts, and shew that the plaintiff hath received no injury. 3 *Blackst.* 126.

Whether true or false is not material.

Of any person] Where a writing inveighs against mankind in general, or against a particular order of men, as for instance, men of the gown, this is no libel; but it must descend to particulars and individuals to make it a libel. 3 *Salk.* 224.

General accusation is not a libel.

Expressed either in printing or writing, signs or pictures] A libel is either in writing, or without writing: In writing, when an epigram, rhyme, or other writing is published to the contumely of another, by which his fame or dignity may be prejudiced: Without writing, may be by pictures, as to paint the party in any shameful and ignominious manner; or by signs, as to fix a gallows, or other reproachful and ignominious signs at a man's door. 5 *Co.* 125.

May be in writing or without.

E. 7 G. Mayor of Northampton's case. He sent lord *Halifax* a licence to keep a public house, which the court said was a libel in the case of a person of his quality, and granted an information for it. *Str.* 422.

Or the memory of one that is dead] For the offence is the same, whether the person libelled be alive or dead. 5 *Co.* 125.

Person libelled being dead.

II. Who are punishable for it.

Composer, procurer, and publisher.

It is certain, that not only he who composes a libel, or procures another to compose it, but also he who publishes, or procures another to publish it, are in danger of being punished for it; and it is said not to be material, whether he who disperses a libel know any thing of the contents or effect of it or not; for nothing would be more easy, than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher, would make him safe in dispersing them. 1 *Haw.* 195.

Also it hath been said, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or shew it to another, he is guilty of an unlawful publication of it. *id.*

Copying a libel.

Also it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove, that he delivered it to a magistrate to examine it. *id.*

Finding a libel on a bookseller's shelf.

And it hath been ruled, that the finding a libel on a bookseller's shelf, is a publication of it by the bookseller; and that it is no excuse to say, that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. 1 *Seff. C.* 33. *K. and Dodd*, 10 *G.*

Writing a libel dictated by another.

And it seems to be the better opinion, that he who first writes a libel dictated by another, is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel, till it was reduced to writing; for the essence of a libel consisteth in the writing of it; for if a man speak such words, unless the words be put in writing, it is not a libel. 2 *Salk.* 419. 1 *Haw.* 195.

Sending a provoking letter.

Also it hath been resolved, that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. 1 *Haw.* 195.

But it hath been resolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publicly known, is an evidence of the publication of it. 1 *Haw.* 196.

III. How

III. How punishable.

There seemeth to be no doubt, but that the offenders may be condemned to pay such fine, and also to suffer such corporal punishment, as to the court in discretion shall seem proper, according to the heinousness of the crime, and the circumstances of the offender. 1 *Haw.* 196.

And it hath been adjudged, that libels, as having a direct and immediate tendency to a breach of the peace, are indictable before justices of the peace. 2 *Haw.* 40.

On an indictment setting forth the offence, according to the tenor and to the effect following, it was agreed by the court, that to the effect following had been naught, being vague and useless words; for the court must judge of the words themselves: But the words, according to the tenor, do correct the defect; for they import the very words themselves, for the tenor of a thing is the transcript and true copy of it, to which it may be compared: And therefore of words spoken there can be no tenor, because there is no written original. 2 *Salk.* 417. 3 *Salk.* 225.

And it must be proved to be written or published, in the county laid in the indictment; all matters of crime being local. *Read. Lib. State Tr. V. 3.* 774, 775. *V. 4.* 672.

Indictment for a libel.

THE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county of ——— gentleman, not having God before his eyes, but moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said lord the king into hatred and infamy amongst his subjects, and to move sedition amongst the subjects of our said lord the king, did on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— aforesaid, in the county aforesaid, falsely, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, intituled ——— In which said libel are contained, among other things, divers false, seditious, scandalous, and malicious matters, according to the tenor following, to wit, ——— And in another part of the same libel are contained divers other false, seditious, scandalous, and malicious matters, according to the tenor following ——— to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Linén cloth.

FOR the duties on linen cloth printed or stained, see title *Excise*.

For journeymen and other workmen imbezilling the materials of the linen manufacture, see title *Servants*.

Who may set up
trades in the lin-
en manufacture.

Any person, native or foreigner, may without paying any thing, in any place, privileged or unprivileged, corporate or not corporate, set up and exercise the occupation of breaking, hickling, or dressing of hemp or flax; as also for making or whitening of thread; as also of spinning, weaving, making, whitening, or bleaching any cloth made of hemp or flax only; as also the mystery of making twine or nets for fishery, or of stoving of cordage; as also the trade of making tapestry hangings. 15 C. 2. c. 15. s. 2.

And all foreigners that shall use any the trades aforesaid three years, shall (taking the oaths of allegiance and supremacy before two justices near unto their dwellings) enjoy all privileges as natural born subjects. s. 3.

Deceitful mak-
ing of linen
cloth.

Whereas certain evil disposed persons, by sundry devices, stretch linen cloth both in length and breadth, and then with battledores or otherwise beat the same, casting thereupon certain deceitful liquors mingled with chalk and other like things, whereby the cloth is made finer and thicker to the eye, but the threads are thereby loosened and made weak: If any person shall hereafter use the said deceits, or do any other act with any linen cloth whereby it shall be made worse, the said cloth shall be forfeited, and the offender punished by one month's imprisonment at the least, and pay such fine as the justices shall assess. 1 El. c. 12. s. 1.

And the judges of assize, and justices of the peace or three of them (1 Q.) may hear and determine the same in their sessions, by information, indictment, or upon the traverse of any presentment or indictment found before them. s. 2.

And if any person shall seize any such deceitful linen cloth, he shall at the next sessions, or before two justices (1 Q.) make due information of the offence and of the seizure, or else shall procure the offender to be indicted at the next sessions, and shall also be bound by recognizance or obligation to pursue the same with effect, and to give evidence, and to pay the moiety of what he shall recover, to the sheriff or other accountant to the use of the king. And the other half shall go to the informer or prosecutor. s. 3.

And the justices before whom the offence shall be tried, shall certify the same by estreat into the exchequer yearly at *Michaelmas* as they do other estreats, and thereupon the barons

Barons may make process for so much thereof as appertaineth to the king, in like manner as for other fines. *f. 4.*

By the 18 G. 2. c. 27. Every person who shall, by day or night, feloniously steal any linen, fustian, calico, or cotton cloth; or cloth worked, woven, or made of any cotton or linen yarn mixed; or any thread, linen, or cotton yarn; linen or cotton tape, incle, filleting, laces, or any other linen, fustian, or cotton goods, laid to be printed, whitened, bowked, bleached, or dried, to the value of 10 s. or shall knowingly buy or receive any such wares stolen, shall be guilty of felony without benefit of clergy.

Destroying in the working, or stealing linen cloth.

And by the 4 G. 3. c. 37. If any person shall, by day or night, break into any house, shop, cellar, vault, or other place or building, or by force enter into any house, shop, cellar, or vault, or other place or building, with intent to steal, cut, or destroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactory, or the looms, tools, or implements used therein; or shall wilfully or maliciously cut in pieces or destroy any such goods, when exposed either to bleach or dry; he shall be guilty of felony without benefit of clergy. *f. 16.*

If any person shall cause any stamps to be affixed to any foreign linens imported, in imitation of the stamps put on *Scotch* or *Irish* linens; he shall forfeit 5 l. for each piece: Or if any person shall expose or pack up for sale any foreign linens (knowing them to be so stamped) as the manufacture of *Scotland* or *Ireland*; he shall forfeit the same, and also 5 l. for each piece. And if any person shall affix any counterfeit stamp on any linen of the manufacture of *Great Britain* or *Ireland*, in order to vend the same as linens duly stamped; he shall forfeit 5 l. for each piece: And if any person shall expose or pack up for sale, any such linens, knowing them to be so stamped; he shall forfeit the same, and also 5 l. for each piece. 17 G. 2. c. 30. *f. 1.*

Affixing counterfeit stamps on linen cloth.

And one justice may convict the offender on the oath of one witness, and may grant his warrant for distress and sale; and for want of sufficient distress, any justice, on proof thereof made on oath by the person executing the warrant, may commit him to gaol for six months, unless it be paid sooner: Which penalty shall go to the informer, deducting 2 s. in the pound to be paid to the constable who shall execute the warrant. *f. 2.*

Cambricks or *French lawns*, legally imported, may be worn or sold, and no person shall be prosecuted for having the same in his possession. 27 G. 3. c. 13. *f. 23.* 27 G. 3. c. 32 *f. 19.*

Cambricks or French lawns may be worn or sold.

By

Linen cloth.

Cambricks and
lawns made in
England.

By the 4 G. 3. c. 37. and 7 G. 3. c. 43. There are divers regulations concerning the making and stamping cambricks and lawns made in *England*; and if any person shall forge and counterfeit such stamp, he shall be guilty of felony without benefit of clergy.

Ling, Burning of it. See Burning.

London.

THERE are many acts of parliament relating to the city of *London* and other places within the bills of mortality, which being only local are not within the compass of this work, and which would require a distinct volume of themselves. Sir *John Fielding*, in his "Extract" of the penal laws relating to the peace and good order of the city of *London*," hath collected these partly, amongst other more general laws, for the instruction of ignorant offenders, and admonition of the unwary. It would be a work of further service to the metropolis, if some person would undertake a compleat collection and digest of all the laws relating to the cities of *London* and *Westminster*, and other places within the bills; out of which might be selected again, such only as concern the office of a justice of the peace in particular.

By 32 G. 3. c. 53. Seven public offices are to be appointed, for the benefit of such parts of *Middlesex* and *Surry* as lie near *London*; and a certain number of justices, constables, &c. are to be appointed to each office: for which see the act itself.

Lord's day.

Resorting to
church on
the Lord's day.

ALL persons, not having a reasonable excuse, shall resort to their parish church or chapel (or to some congregation of religious worship allowed by the toleration act) on every *Sunday*; on pain of punishment by the censures of the church, or of forfeiting 1 s. to the poor for every offence. 1 El. c. 2. f. 14. 24. To be levied by the churchwardens by distress, by warrant of one justice. 3 J. c. 4. f. 27, 28.

Sports on the
Lord's day.

King *James* the first, in 1618, publicly declared to his subjects, in what was called the book of sports, these games

games following to be *lawful*, viz. dancing, archery, leaping, vaulting, maygames, whitfun ales, and morris dances; and did command that no such honest mirth or recreation should be forbidden to his subjects on *Sunday* after evening service: But restraining all recusants from this liberty; and commanding each parish to use these recreations by itself; and prohibiting all *unlawful* games, bear baiting, bull baiting, interludes, and bowling by the meaner sort. *Dalt. c. 46.*

After which it was enacted by the statute of the 1 C. c. 1. that there shall be no concourse of people *out of their own parishes* on the Lord's day, for any sport or pastimes; nor any bear baiting, bull baiting, interludes, common plays, or other *unlawful* exercises and pastimes used by any persons *within their own parishes*; on pain that every offender, being convicted within a month after the offence, before one justice on view, or confession, or oath of one witness, shall forfeit for every offence 3 s. 4 d. to the poor, to be levied by the constable and churchwardens by distress; in default of distress, the party to be set publickly in the stocks for three hours.

Within *London or Westminster*, or in the neighbourhood thereof, any house opened upon the Lord's day for publick entertainment, amusement, or debate on religious or any other subjects, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house; and the keeper thereof shall forfeit 200 l. the person managing or conducting the entertainment, or acting as chairman or moderator, 100 l. and every door-keeper or servant who shall collect money or deliver out tickets 50 l. to him who shall sue. 21 G. 3. c. 49.

Places of entertainment on the Lord's day.

By the 1 J. c. 22. No *shoemaker* shall shew, to the intent to put to sale, any shoes, boots, buskins, startops, slippers, or pantofles, upon the *Sunday*; on pain of 3 s. 4 d. a pair, and the value thereof; to be recovered at the assizes, sessions, or leet; one third to the king, one third to him who shall sue, and one third to the town or lord of the leet. J. 28. 46. 50.

Exercising worldly callings on the Lord's day.

And by the 3 C. c. 1. No *carrier* with any horse or horses, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainmen with any wain or wains, nor *drovers* with any cattle, shall by themselves, or any other, travel on the Lord's day, on pain of 20 s.; or if any *butcher*, by himself, or any other for him, with his privity and consent, shall kill or sell any victual on the Lord's day, he shall forfeit 6 s. 8d. The conviction

Lord's day.

tion to be in six months before one justice, or mayor, ~~on~~ view, or confession, or oath of two witnesses; to be levied by the constable or churchwarden by distress; or to be recovered in any court of record, in any city or town corporate, before the justices in sessions; to be applied to the use of the poor, except that the justice may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part.

And by the 29 C. 2. c. 7. it is further enacted, That no *drover, horse courser, waggener, butcher, higler*, or any of their servants, shall travel, or come to his inn or lodging on the Lord's day, on pain of 20 s.; and in general, that no *tradesman, artificer, workman, labourer, or other person*, shall do or exercise any worldly labour, business or work of their ordinary calling on the Lord's day; (except works of necessity and charity; and except dressing of meat in families, and dressing and selling of meat in inns, or cooks shops, or victualling houses, for such as cannot otherwise be provided; and by the 9 An. c. 23. f. 20. except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender above 14 years of age forfeiting 5s.: and also that no person shall publickly *cry, shew forth, or expose to sale* any wares, merchandizes, fruit, herbs, goods or chattels whatsoever, on the Lord's day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *Sundays*, before or after divine service, by the 10 & 11 W. c. 24. f. 14.) on pain of forfeiting the same; and also that no person shall use, employ, or travel on the Lord's day, with any *boat, wherry, lighter, or barge* (unless allowed by a justice of peace, on extraordinary occasion; and except 40 watermen who may ply on the *Thames* on *Sundays* betwixt *Vauxhall* and *Limehouse*, by the 11 & 12 W. c. 21. f. 13.) on pain of 5 s.: and if any person offending in any of the premises, shall thereof be convicted in ten days after the offence, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice may out of the same reward the informer with any sum not exceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

By the 2 G. 3. c. 15. *Fish* carriages shall be allowed to pass

pafs on Sundays and holidays, whether laden or returning empty. *J. 7.*

E. 32 G. 2. K. and Cox. An information was moved for againſt a juſtice of the peace, for refuſing to receive an information againſt a baker, for exerciſing his trade on a Sunday, contrary to the aforeſaid ſtatute of the 29 G. 2. c. 7. On ſhewing cauſe, it appeared, that the charge againſt the baker was, not for baking bread, but for baking puddings, and pies, and other ſuch things for dinner. And the court were of opinion, that this was not an offence within the act; but falls within the exception of works of neceſſity and charity, and within the equity of the proviſo as being a cook's ſhop; there being the ſame reaſon that the baker ſhould bake for others, as that a cook ſhould roaſt and boil for them: And it is better that one baker and his men ſhould ſtay at home, than many families and ſervants. And the rule to ſhew cauſe was diſcharged, with coſts. *Burr. Manſf. 785.*

T. 17 G. 3. Crepps and Durdan. The plaintiff was convicted for ſelling ſmall hot loaves of bread on the ſame day, being Sunday, by four ſeparate convictions, in the ſum of 5 s. each. It was objected, that there can be but one offence, attended with one ſingle penalty, on one and the ſame day. By *L. Manſfield*: The true conſtruction of the act is, exerciſing his ordinary trade upon the Lord's day, and that without any fraction of a day, hours, or minutes. It is one entire offence, whether longer or ſhorter in point of duration, or whether it conſiſt of one or a number of particular acts, makes no difference. The penalty incurred is 5 s. There is no idea conveyed by the act, that, if a taylor ſews on the Lord's day, every ſtitch he takes is a ſeparate offence; or, if a ſhoemaker or carpenter work for different customers at different times on the ſame Sunday, that thoſe are ſo many ſeparate and diſtinct offences. There can be but one intire offence, on one and the ſame day. And this is even a much ſtronger caſe than that upon the game laws. Killing a ſingle hare is an offence, but the killing of ten more in the ſame day will not multiply the offence, or the penalty impoſed by the ſtatute for killing one. Here, repeated offences are not the object which the legiſlature had in view in making the ſtatute; but ſingly, to puniſh a man for exerciſing his ordinary calling on the Lord's day. *Cowper. 640.*

By the 13 G. 3. c. 80. If any perſon ſhall, on a Sunday, take, kill, or deſtroy, or uſe any gun, dog, ſnare, net, or other engine for taking, killing, or deſtroying, any hare, pheafant,

Killing game on the Lord's day.

Serving process
on the Lord's
day.

pheasant, partridge, moor game, heath game, or grouse; he shall, on conviction on the oath of one witness before one justice, forfeit for the first offence not exceeding 20 l. nor less than 10 l.; for the second offence, not exceeding 30 l. nor less than 20 l.; for the third and every other offence 50 l. to be recovered upon indictment at the sessions: as is set forth more particularly under the title *Game*.

No person upon the Lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. 29 C. 2. c. 7. s. 6.

But this doth not extend to ecclesiastical process, as citations, or excommunications. *Gibb. 271.*

A justice issued a warrant to the constable, to make a person find sureties for his *good behaviour*: the constable executed the warrant on a *Sunday*, and he was justified by the court; who resolved, that a warrant for the good behaviour is a warrant for the *peace*, and more; and that this statute is to be favourably interpreted for the peace. *Raym. 250.*

E. 26 G. 3. K. v. Myers.—*Erskine* had obtained a rule to shew cause why the defendant, who had been convicted in a penalty under the lottery act, and sent to the house of correction for want of sufficient distress, should not be discharged, *because he was apprehended on a Sunday.*—*Bearcroft* shewed cause: This is a commitment for a thing prohibited by act of parliament, it is indictable, and therefore a constructive breach of the peace; and then this commitment is like a warrant on an indictment, which may be executed on a *Sunday*: A person may be taken on a *Sunday* upon an attachment for non-performance of an award. 1 Atk. 58.—*Erskine* in support of the rule: Though the defendant might have been prosecuted in a criminal manner on this act, yet this is a civil proceeding, and in the nature of a *fi. fa.* and on a return of *nulla bona*, the person is liable; for first, a warrant is issued to seize the goods, and for want of distress, the person is taken.—*Curia adv. vult.* Afterwards *Buller J.* said, there is no case exactly in point. It is most similar to an action for a penalty on the same statute, and it is clear, that upon execution in such an action, the defendant could not have been taken on a *Sunday*. This is to recover a penalty given by a statute, and the effect is equally the same whether recovered before a justice, or in

Lord's day.

III.

an action: This is not like the case of an attachment mentioned above; that might have been good law formerly, for then the court only looked to the contempt, but it has been settled of late years, that an attachment for non-performance of an award, is only in the nature of a civil action. This question was much agitated some few years ago, when the court held, that the party being in custody for non-payment of costs, was entitled to be discharged under the Lord's act. *Caf. by Durnf. & East.* 265.

No hundred shall be answerable for any robbery on the Lord's day: Nevertheless the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much money as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. 29 C. 2. c. 7. s. 5.

Robbery on the Lord's day.

M. 7 G. Tashmaker against the hundred of *Edmonton*. The plaintiff lived a mile or two from the church, and going thither with his lady in his coach on a Sunday was robbed, and brought his action against the hundred, and recovered; for the statute extends only to the case of travelling. But *Pratt Ch. J.* said, if they had been going to make visits, it might have been otherwise. *Str.* 406. *Comyns*, 345.

Warrant on the 3 C. c. 1. and 29 C. 2. c. 7. to levy 20s. on a carrier for travelling on the Lord's day; which same will do, *mutatis mutandis*, for the other penalties under this title.

Westmorland. { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county.

FORASMUCH as A. O. of ——— in the county of ——— carrier, is duly convicted before me J. P. Esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, for that he the said A. O. on the ——— day of ——— in the ——— year of the reign of ——— being the Lord's day, commonly called Sunday, with his horses into and through the said parish of ——— did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of 20 s. of lawful money of England; these are therefore to command you forthwith to levy the said sum of 20 s. by distraining the goods and chattels of him the said A. O. And if with-

Lords day.

in the space of [five] days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6 s. 8d. part of the said sum of 20 s. to A. l. of ——— yeoman, who informed me of the said offence, and that you see the remaining sum of 13 s. 4d. employed to the use of the poor of your said parish of ——— returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal at ——— in the said county, the ——— day of ———.

Lotteries. See Gaming.

Low wines. See Excise.

Lunaticks.

Who.

NON compos mentis is of four kinds;

First, Ideots; who are of *non sane memory* from their nativity, by a perpetual infirmity.

Secondly, Those that lose their memory and understanding by the visitation of God, as by sickness, or other accident.

Thirdly, Lunaticks; who have sometimes their understanding, and sometimes not.

Fourthly, Drunkards; who by their own vicious act for a time deprive themselves of their memory and understanding. 1 *Inst.* 247.

Inciting him to commit a crime.

He who incites a madman to do a murder, or other crime, is a principal offender, and as much punishable as if he had done it himself. 1 *Haw.* 2.

Not punishable for criminal offences.

But ideots and lunaticks, who are under a natural disability of distinguishing between good and evil, are not punishable by any criminal prosecution. *id.*

Yet drunkards shall have no privilege by their want of sound mind; but shall have the same judgment as if they were in their right senses. 1 *Inst.* 247. 1 *Haw.* 2.

1 *H. H.* 32.

Punishable for civil offences.

But if a person, who wants discretion, commit a trespass against

against the person or possession of another; he shall be compelled in a civil action to give satisfaction for the damage. 1 Haw. 2.

If one who hath committed a capital offence become *non compos* before conviction, he shall not be arraigned; and if after conviction, he shall not be executed. *Hale's Pl. 10.* 1 Haw. 2.

By the common law, if it be doubtful whether a criminal, who at his trial in appearance is a lunatick, be such in truth or not, it shall be tried by an inquest of office, to be returned by the sheriff; and if it be found by them, that the party only feigns himself mad, and he still refuse to answer, he shall be dealt with as if he had confessed the indictment. 1 Haw. 2.

An idiot cannot bring an appeal. 1 Haw. 162.

Neither can he be an approver; because he can neither take the oath in that case required, nor wage battle. 3 Inst. 129.

Any person may justify confining and beating his friend being mad, in such manner as is proper in such circumstances. 1 Haw. 130.

By the 17 G. 2. c. 5. it is enacted, that whereas there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses that they may be dangerous to be permitted to go abroad, it shall therefore be lawful for two or more justices where such lunatick or mad person shall be found, by warrant directed to the constables, churchwardens, and overseers of the place, or some of them, to cause such person to be apprehended, and kept safely locked up in some secure place, within the county or precinct, as such justices shall under their hands and seals direct and appoint, and (if such justices find it necessary) to be there chained, if the settlement of such person shall be within such county or precinct:

And if such settlement shall not be there, then such person shall be sent to his settlement by a vagrant pass (*mutatis mutandis*); and shall be locked up or chained by warrant of two justices of the county or precinct, to which such person is so sent, in manner aforesaid:

And the reasonable charges of removing, and of keeping, maintaining, and curing such persons, during such restraint (which shall be during such time only as such lunacy or madness shall continue), shall be satisfied and paid (such charges being first proved upon oath) by order of two justices, directing the churchwardens or overseers, where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or

Becoming non compos before trial.

How tried whether he is non compos.

Whether he may bring an appeal. Whether he may be an approver.

Friends restraining him.

May be restrained by order of two justices.

Or sent to his settlement.

Expenses.

receive so much of the annual rents of the lands, as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions: But if such person hath not an estate to satisfy the same, over and above what shall be sufficient to maintain his family, then such charges shall be paid by the parish, town, or place, to which such person belongs, by order of two justices, directed to the churchwardens or overseers for that purpose. *f.* 20.

Appeal.

Provided that any person aggrieved by any act of such justices out of sessions may appeal to the next sessions, giving reasonable notice; whose order therein shall be final. *f.* 26.

Exceptions.

But nothing herein shall restrain or abridge the power of the king, or lord chancellor; nor shall restrain or prevent any friend from taking them under their own care and protection. *f.* 21.

Houses for reception of lunaticks to be licensed.

By the 14 G. 3. c. 49^a (which is enacted to be in force for 5 years, and by the 19 G. 3. c. 15. is continued for 7 years further, and by 26 G. 3. c. 91. made perpetual) No person, on pain of 500 l. shall entertain or confine, in any house kept for the reception of lunaticks, more than one lunatick at one time, without a licence to be granted yearly by the college of physicians within *London* and *Westminster* and seven miles thereof and within the county of *Middlesex*, and elsewhere by the justices in sessions.

King the guardian of lunaticks.

The king is the general guardian of idiots and lunaticks, 17 Ed. 2. *f.* 1. c. 9, 10.

Whether he may avoid his own act.

A person of *non sane* memory shall not avoid his own act, by reason of this defect; but his heir or executor may. 4 Co. *Brerley's* case.

Whether he may consent to marriage.

If an idiot, or a lunatick not being in a lucid interval, takes a wife, the marriage is void; for consent is necessary to make a marriage effectual, and neither of them is capable of consenting to any thing. But as it might be difficult to prove the exact state of the party's mind at the actual celebration of the nuptials, therefore it is provided by the 15 G. 2 c. 30. that the marriage of lunaticks and persons under phrenzies (if found lunaticks under a commission, or committed to the care of trustees by any act of parliament) before they are declared of sound mind by the lord chancellor or the majority of such trustees, shall be totally void. 1 *Black.* 438.

In what manner he may surrender or accept a surrender of leases.

A lunatick may surrender a lease in the court of chancery or exchequer, in order to renew the same. 29 G. 2. c. 31.

Also,

Lunaticks.

FI 5

Also, by direction of the lord chancellor, he may accept a surrender of such lease, and execute a new one. 11 G. 3. c. 20.

To make a will, it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate, with understanding and reason. 6 Co. 23.

Whether he may
make a will.

Madder.

IF any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots; and shall be convicted thereof before one justice, by confession or oath of one witness; he shall, for the first offence, pay to the owner such satisfaction for damages and in such time as the justice shall appoint, and moreover shall pay down upon the conviction to the overseer for the use of the poor such sum not exceeding 10 s. as to the justice shall seem meet; and if he shall not make such recompence, and also pay such sum to the use of the poor, the said justice shall commit him to the house of correction for any space not exceeding one month, or may order him to be whipped by the constable or other officer, as to the said justice shall seem meet: and for the second offence, shall by such justice be committed to the house of correction for three months. Prosecution to be commenced within thirty days. 31 G. 2. c. 35. s. 5, 6.

Madmen. See Lunaticks.

Maim.

MAIM is such a hurt of any part of a man's body, whereby he is rendered less able in fighting, either to defend himself, or annoy his adversary. 1 Haw. 111.

For the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country when occasion shall be offered: and therefore a person who maims himself, that he may

H 2

have

have the more colour to beg, may be indicted and fined.
1 *Inst.* 127.

And by the like reason. a person who disables himself, that he may not be impressed for a soldier.

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye, or foretooth, or castrating him, are said to be maims, but the cutting off his ear, or nose, were not esteemed maims at the common law, because they do not weaken but only disfigure him.
1 *Haw.* 111, 112.

It is said, that anciently castration was punished with death; and other maims with the loss of member for member: but afterwards no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. *id.*

But now by the 22 & 23 C. 2. c. 1. (which is called the *Coventry* act, because it was made on the occasion of Sir John *Coventry's* being assaulted in the street, and his nose slit) If any person, on purpose, and of malice forethought, and by laying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intencion in so doing to maim or disfigure him; the person so offending, his counsellors, aiders, and abettors (knowing of and privy to the offence) shall be guilty of felony without benefit of clergy; but not to work corruption of blood.

If a man attack another with intent to murder him, and he does not murder, but only maim him; the offence is nevertheless within the statute. 1 *Haw.* 112.

The case was, one Mr. *Coke* a gentleman of *Suffolk*, and one *Woodburn* a labourer, were indicted, in 1722, *Coke* for hiring and abetting *Woodburn*, and *Woodburn* for the actual fact of slitting the nose of Mr. *Crispe*. The murder of *Crispe* was intended, and he was left for dead, being terribly hacked and disfigured with a hedge bill; but he recovered. Now the bare intent to murder is no felony: but to disfigure, with an intent to disfigure, is made so by this statute; on which they were therefore indicted. And *Coke* rested his defence upon this point, that the assault was not committed with an intent to disfigure, but with an intent to murder, and therefore not within the statute. But the court held, that if a man attack another to murder him with such an instrument as a hedge bill, which cannot but indanger the disfiguring him; and in such attack happens not to kill, but only to disfigure him; he may be indicted on this statute: and it shall be left to the jury

jury whether it was not a design to murder by disfiguring, and consequently a malicious intent to disfigure as well as to murder. Accordingly the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder. And they were both condemned and executed. 4 *Black.* 207.

If the maim comes not within any of the descriptions in the act, yet it is indictable at the common law, and may be punished by fine and imprisonment: Or an appeal may be brought for it at the common law; in which the party injured shall recover his damages: or he may bring an action of trespass; which kind of action hath now generally succeeded into the place of appeals in smaller offences not capital. 2 *Haw.* 157—160.

It doth not seem, that in maiming there may be accessories after the fact. 2 *Haw.* 311.

For maiming of cattle, see title Cattle,

Mainprize. See Bail.

Maintenance.

BUYING of titles belongeth not to this place, but is treated of under a title of its own.

- I. Of maintenance in general.
- II. Of champerty in particular.
- III. Of embracery in particular.

I. Of maintenance in general.

Maintenance (*manu tenere*) is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right. 1 *Haw.* 249. Maintenance, what.

And it is twofold:

One in the country; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtilty; or where one stirs up quarrels, and suits in the country, in relation to matters wherein he is no way concerned: And this kind of maintenance is punishable at the king's suit by fine and imprisonment, whether the matter in dispute any way de-

In the country.

pended in plea or not; but it is said not to be actionable.

1 Haw. 249.

In courts of justice.

Another in the *courts of justice*; where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise, in the prosecution or defence of any such suit. *id.*

Of this second kind of maintenance, there are three species;

First, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*.

Secondly, where one maintains one side to have part of the thing in suit; which is called *champerty*.

Thirdly, where one laboureth a jury; which is called *embracery*. 1 Haw. 249.

But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same.

1 Haw. 252.

Also, that whoever is any way of kin or affinity to the party, may counsel and assist him, but that he cannot justify the laying out any of his own money in the cause unless he be either father, or son, or heir apparent. *id.*

Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit.

1 Haw. 253.

Now punishable by the common law.

It seemeth that all maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression: and therefore it is said, that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render such damages as shall be answerable to the injury done to the plaintiff, but also that they may be indicted as offenders against publick justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also it seemeth, that a court of record may commit a man for an act of maintenance done in the face of the court. 2 Inst. 212.

1 Haw. 255.

Now punishable by statute.

By the 1 Ed. 3. st. 2. c. 14. *No person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.*

And by the 20 Ed. 3. c. 4. *None shall take in hand quarrels other than their own, nor the same maintain, by them*

nor

nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law, and hindrance of right.

And by the 1 R. 2. c. 4. *None shall take or sustain any quarrel by maintenance in the country, nor elsewhere, on pain, if he is a great officer, as the king by advice of the lords shall ordain; if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment, and ransom at the king's will.*

And by the 32 H. 8. c. 9. *No person shall unlawfully maintain or procure any unlawful maintenance, in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea, to the disturbance or hindrance of justice; on pain of 10l. half to the king, and half to him that shall sue within one year.*

Unlawfully maintain] It seemeth that in an information on this statute, it is not sufficient to say, that the defendant maintained the party, without adding that he did it unlawfully. 1 Haw. 256.

Having power to hold plea of lands] It is said to have been adjudged, that maintenance of a suit in a spiritual court, is neither within this nor any other statute concerning maintenance. *id.*

To hold plea] It hath been holden that in an information on this statute, it is necessary to shew, that a plea was depending; and therefore that it is not sufficient to say that a bill was exhibited. *id.*

II. Of champerty in particular.

Champerty (from *campi parte*) is the unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or thing in dispute, or part of the gains. 1 Haw. 156. 33 Ed. 1. ft. 2.

What it is.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a species of maintenance which is the genus. 2 Inst. 208.

Champerty was an offence at the common law, and as such is punishable in like manner as hath been expressed in treating of maintenance in general. 2 Inst. 208.

How punishable by the common law.

By the 3 Ed. 1. c. 25. *No officer of the king, by himself, nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made be-*

How punishable by statute.

Maintenance.

tween them; and he that doth shall be punished at the king's pleasure.

By covenant made] That is, by agreement either by word or writing; for albeit in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken (as it is here) for an agreement by writing or by word. 2 Inst. 209.

And by the 28 Ed. 1. c. 11. *No person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he hath purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.*

And by the 33 Ed. 1. st. 3. *Any person who shall take for maintenance, or the like bargain, any suit or plea against another; he, and also they who consent thereto, shall be imprisoned three years, and make fine at the king's pleasure.*

And by the 1 R. 2. c. 9. *A feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors with double damages, without having any regard to such alienations*

Shall be void] But it is said that it shall only be void with regard to him that hath right, and not between the feoffor and feoffee. 1 Inst. 369.

And by the 31 El. c. 5. *The offence of champerty may be laid in any county, at the pleasure of the informer. l. 4.*

III. Of embracery in particular.

What it is,

It seems clear, that any attempt whatsoever to corrupt, or influence, or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. 1 Haw. 259.

And the law so far abhors all corruption of this kind, that it prohibits every thing which has the least tendency to it, what specious pretence soever it may be covered with, and therefore it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. *id.*

But any person who may justify any other act of maintenance, may safely labour a juror to appear and give a
verdict

verdict according to his conscience ; but no one whatsoever can justify the labouring a juror not to appear.
1 *H.w.* 260.

There is no doubt, but that offences of this kind do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. 1 *Haw.* 260. How punishable by the common law.

1. By the 32 H. 8. c. 9. *No person shall embrace any jurors on pain of 10 l. half to the king, and half to him that shall sue within a year.* 1. 3. 6. How punishable by statute.

2. And by the 38 Ed. 3. st. 1. c. 12. *If any juror shall take any thing to give his verdict ; both he, and the embracer, shall forfeit ten times as much, half to the king, and half to him that shall sue.*

Upon which statute is founded the writ of *Decies tantum*.

Indictment for maintenance.

THE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms at ——— aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit which was then depending in the court of our said lord the king, before the king himself, between A. P. plaintiff, and A. D. defendant, in a plea of debt, on the behalf of the said A. P. against the said A. D. contrary to the form of the statute in such case made and provided, and to the manifest hindrance and disturbance of justice, and in contempt of our said lord the king, and to the great damage of the said A. D. and against the peace of our said lord the king, his crown and dignity.

Malt. See *Extrise*,

Man (Island).

BY the 5 G. 3. c. 26. For the sum of 70,000*l.* Purchase of the Isle of Man.
paid to John duke of Athol and Charlotte his wife, baroness Strange, the island, castle, pele, and lordship of Man, and all the islands and lordships thereunto appertaining, with all rights, jurisdictions, and interests in and over the same, are vested unalienably in the crown ; reserving to the said duke and duchess their landed property, with all their rights in and over the soil as lords of the manor,

manor, with all courts baron, rents, services, and other incidents to such courts belonging, waives, commons, and other lands, inland waters, fisheries, mills, mines, minerals, quarries, waifs, estrays, deodands, wrecks, together with the patronage of the bishoprick, and of the other ecclesiastical benefices to which at the time of the said purchase they were intitled.

In pursuance whereof, divers regulations were made by several statutes, respecting the trade and manufactures of the said island, and for preventing the clandestine exportation of goods from thence into this kingdom, which was the grievance intended to be remedied by the said purchase. Particularly,

The same made
subject to the
laws of custom
and excise.

By the 5 G. 3. c. 39. Power is given to the officers of the customs and excise, to visit and search ships and vessels, in any harbour or other place belonging to the said island, and to seize contraband goods there, as they may do in *Great Britain*.

Duties on goods
imported there.

And for the better defraying the expences of government, the former duties upon importation and exportation shall cease, and other duties are laid instead thereof; particularly, for every gallon of *British* spirits imported from *England* shall be paid 1 s. of rum 2 s. pound of bohea tea 1 s. green tea 1 s. 6d. coffee 9 d. tobacco 3 d. chaldron of coals 3 d.; hemp, iron, deal boards, and timber imported from foreign parts 10 l. *per centum ad valorem*, ton of *French* wine 8 l. all other sorts of wine 4 l. 7 G. 3. c. 45. 20 G. 3. c. 42.

Restriction of the
quantities of
goods to be im-
ported.

And the commissioners of the customs may grant licences (to continue in force for 30 days) to export from *England*, into the port of *Douglas* only, not exceeding 40,000 gallons of *British* spirits, 30,000 gallons of rum (and from *Scotland* 10,000 gallons of rum), 20,000 pounds weight of bohea tea, 5,000 pounds weight of green tea, 5,000 pounds weight of coffee, and 120,000 pounds weight of tobacco, in one year. 7 G. 3. c. 45. 20 G. 3. c. 42.

What goods may
be imported duty
free.

Flax or flax seed, raw or brown linen yarn, wood ashes, and weed ashes, fish and flesh of all sorts, and any sort of corn or grain, may be imported duty free from any place except from *Great Britain* only; and from *Great Britain* or *Ireland* any white or brown linen cloth, hemp, or hemp seed, horses and black cattle, utensils for manufacture, fisheries or agriculture, bricks and tiles, young trees, sea shells, lime, soapers waste, packthread, and small cordage for nets; and from *Great Britain*, salt, boards, timber, hoops, iron in rods or bars, cotton, indico, naval stores, and all sorts of wood called lumber. 7 G. 3. c. 45.

The

Man (Island).

123

The inhabitants of the said island may export into *Great Britain*, bestials, or any goods of the produce and manufacture of the said island (except as above excepted, and except woollen manufactures, beer, and ale); without paying any duty for the same, other than is paid for the like in *Great Britain*. But this not to extend to give liberty to import into *Great Britain* from the said island any goods of the growth or produce of any foreign nation, which may be in part or fully manufactured in the said island; except linen manufactures made there of hemp or flax, not being the produce of the said island.—And the bounties on exportation of *British* and *Irish* linens shall be allowed on the like species of linen made in the isle of *Man*, imported into and exported from *Great Britain*.

Goods exported
duty free.

5 G. 3. c. 43.

No tea, brandy, strong waters or spirits, coffee, chocolate, tobacco, glass, coals, silks, or salt, shall be exported from the said island, on pain of forfeiture, together with the vessel. And no wool, woollen or bay yarn, or live sheep, shall be exported, except to *Great Britain*.

What goods may
not be exported.

7 G. 3. c. 45.

No distillery of low wines or other spirits shall be carried on in the said island, on pain of forfeiture of 200 l. with the materials and utensils. 7 G. 3. c. 45.

Distillery pro-
hibited.

No spirits shall be exported from thence, nor carried coastwise there, in any ship or vessel less than 100 tons burden, nor in any cask under 60 gallons (except for the use of the seamen not exceeding two gallons each); and no wine shall be there imported, or carried coastwise, in any ship less than 100 tons burden (except herring vessels trading to *Madeira* and the *Mediterranean*, of not less than 70 tons, 20 G. 3. c. 42.), nor in any cask less than 25 gallons; on pain of forfeiture of the goods and vessel.

Size of vessels.

5 G. 3. c. 39.

Mandamus.

MANDAMUS is a *command* issuing in the king's name out of the court of king's bench, directed to any person, corporation, or inferior court of judicature, requiring them to do some particular thing therein specified, which appertains to their office and duty. It is a high prerogative writ, of a most extensively remedial nature; and may be issued in some cases where the injured party hath also another (but more tedious) method of redress,

Mandamus.

dress, as in the case of admission or restitution to an office; but it issues in all cases where the party hath a right to have any thing done, and hath no other specific means of compelling its performance.

A *mandamus* therefore lies, to compel the admission or restoration of the party applying, to any office or franchise of a publick nature; and more particularly, it issues to the judges of any inferior court, commanding them to do justice according to the powers of their office, whenever the same is delayed.

This writ is grounded on a suggestion, by the oath of the party injured, of his own right, and of the denial of justice by the court or person complained of: whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made (except in some general cases, where the probable ground is manifest) directing the party complained of, to shew cause why a writ of *mandamus* should not issue. And if he shews no sufficient cause, the writ itself is issued, at first in the alternative, either to do thus, or signify some reason to the contrary. To which, a return or answer must be made at a certain day.

And if the inferior judge or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues in the second place a peremptory *mandamus*, to do the thing absolutely; to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ.

If the inferior judge or other person makes no return, or fails in his respect and obedience, he is punishable for his contempt by attachment.

But if he, at the first, returns a sufficient cause, although it should be false in fact, the court of king's bench will not try the truth of the fact upon affidavits: but will for the present proceed no further on the *mandamus*. But then the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained; together with a peremptory *mandamus* to the defendant to do his duty. 3 Black. 110.

Manlaughter. See Homicide.

Marriage.

Marriage.

BY the 26 G. 2. c. 33. If any person shall solemnize matrimony in any other place than a church or publick chapel (unless by a special licence from the archbishop of *Canterbury*); or without publication of bans, or licence, in a church or chapel; he shall (on prosecution in 3 years) be adjudged guilty of felony, and transported for 14 years; and the marriage shall be void. *f.* 8, 9. But not to extend to *Scotland*, nor to the marriages of quakers, or jews. *f.* 17, 18.

And if any person shall knowingly and wilfully insert, or cause to be inserted, in the register book, any false entry of any matter or thing relating to any marriage; or falsly make, alter, forge, or counterfeit, any such entry in the register, or any marriage licence, or cause the same to be done, or assent thereunto, or utter as true any such falsified register or copy thereof, or any such forged licence; he shall be guilty of felony without benefit of clergy. *f.* 16.

For other matters relating to this title, see **Polygamy**, and **Settlement by Marriage**, in the title **Door**; and **stamp duty on Marriages**, in the title **Stamps**.

Master. See **Servant, Apprentice.**

Measures. See **Weights.**

Medicines.

BY the 25 G. 3. c. 79. Every person uttering or vend- Licence.
ing any drugs, oils, waters, essences, tinctures, powders, or other preparations or compositions whatsoever, used or applied, externally or internally, as medicines for the human body, subject to the duties hereafter mentioned, shall take out a licence from the stamp officers; for which shall be paid, if in *London*, or within the limits of the penny post, 20s. elsewhere 5s. And the same shall be renewed annually, ten days at least before the end of the year. *f.* 5, 6, 7.

And if any person shall utter, vend, or expose to sale, any such drugs or medicines without having such licence, he shall forfeit 5 l. *f.* 8.

And upon every packet, box, bottle, phial, or other inclosure, Duty on medicines.

Medicines.

closure, containing any such drugs or medicines as aforesaid, to be used as aforesaid, which shall be uttered or vended, shall be charged a stamp duty, according to the rates following: (that is to say,) where the contents shall not exceed the value of 1 s. shall be charged a duty of 1½ d.
 Above 1 s. and not exceeding 2 s. 6 d. — ditto 3 d.
 Above 2 s. 6 d. and under 5 s. od. ditto 6 d.
 Of 5 s. value and upwards ditto 1 s. od.
f. 2.

The said duties to be under the management of the commissioners of the stamp duties. *f. 6.*

Exceptions.

Provided that the same shall not extend to any drugs named or contained in either of the books of rates; (that is to say,) the book of rates subscribed by Sir *Harbottle Grimstone*, Bart. and referred to by 12 C. 2. c. 4. and an additional book of rates signed by the Right Honourable *Spencer Compton*, and referred to by 11 G. c. 7.—Nor to any medicinal drug which shall be vended entire, without any mixture or composition with any other drug or ingredient, by any surgeon, apothecary, chymist, or druggist who hath served a regular apprenticeship, or who hath served as a surgeon in the navy or army, or by any other person licensed as aforesaid: but all such drugs may be uttered and vended by any such persons, freed from the said duties. *f. 3.*

Mixtures the qualities whereof are known.

Provided also, that nothing herein shall extend to charge any mixture, composition, or preparation whatsoever, uttered or vended by any such surgeon, apothecary, chymist, or druggist, or by any person who hath served as a surgeon in the navy or army, the different properties and efficacies whereof are known and approved; and wherein the person compounding or vending the same, hath not, nor claims to have, any secret, or unknown art for the mixing thereof, nor to the preparing or vending such medicine by the authority of *letters patent*; nor which are advertised or recommended by the makers or venders thereof, as nostrums, or proprietary medicines, or as specifics for prevention or cure of any distemper or complaints. *f. 4.*

Covers, &c. to be sent to the commissioners,

And every person making, preparing, or vending such medicines subject to the duties aforesaid, shall send to the said commissioners, or officers appointed by them for that purpose, paper covers, wrappers, or labels, made for inclosing such medicines, with his name, and any other particular word or thing printed thereon, to denote the value at which the same is intended to be sold, in order that the same may be stamped, and delivered back as occasion may require: And every such packet, box, bottle, phial, or other

to be stamped.

other inclosure containing any such medicine, shall have such stamped cover fixed thereto, in such manner as the said commissioners shall direct. And if any person shall vend, or expose to sale any such medicine, without having such cover affixed thereto stamped as aforesaid; or if the same shall be stamped with a stamp of less value than as before directed, he shall forfeit 5 l. for every such packet, box, bottle, or phial. *f. 9, 10.*

Penalty.

And whoever shall bring to the head office of stamps, any such paper covers, &c. to be stamped as aforesaid, the duties whereof shall amount to ten pounds or upwards, shall have an allowance upon *present payment* of the said duty, after the rate of 2 l. and if such duty amount to 50 l. or upwards, 5 l. in the hundred *per annum*. *f. 14.*

Allowance for prompt payment.

If any person shall fraudulently take off any mark or stamp from any such packet, box, bottle, or phial, after the same hath been sold; or affix to any such packet, box, bottle, or phial, any cover, the same having been before used; or shall buy or sell any such cover, in order to be again made use of; or shall buy or sell, or expose to sale, any such packet, box, bottle, or phial, with such fraudulent cover affixed thereto; he shall forfeit 10 l. And either buyer or seller informing against the other shall be indemnified, and shall be admitted to give evidence, and receive the same benefit as any other informer. *f. 11, 12, 13.*

Persons fraudulently using covers.

And every person who shall make or expose to sale any medicines liable to the said duties, shall, before he make or expose the same to sale, give notice in writing at the next stamp office, of the place he intends to make use of, and also an account of all drugs, oil, water, essences, tinctures, powders, or other preparations and compositions subject to the said duties, that shall be by him made, or exposed to sale, or intended so to be; and the like notice shall be given as often as any such person shall change his place, or vary the articles in which he shall so deal: and such notice shall contain the true name of all such drugs, and the kinds and qualities thereof, and the prices at which the same are intended to be sold; on pain that every person making default, shall forfeit 10 l. *f. 15.*

Notice to be given of the place of making or vending medicines.

And in order to obviate any doubts to what medicines the said duties shall extend, a schedule (A) is annexed, and the said duties shall extend to every article named therein, or by whatsoever other name the same hath been or may be called or known. And all medicines wherein the person making or preparing the same, hath or claims to have any secret art, or exclusive right to the making or selling

To what medicines this act shall extend.

selling thereof by letters patent; or which are advertised or recommended by the maker or vender, as nostrums or medicines for prevention or cure of distempers or complaints as aforesaid, shall be liable to the said duties. *s.* 16.

Penalties how
to be recovered.

All pecuniary penalties by this act imposed, may be sued for in the courts at *Westminster*; or may be recovered before any neighbouring justice, on complaint made within *six* months after the offence is committed; who may summon the party accused, and also the witnesses, and upon confession, or oath of one witness, give judgment therein, and levy such penalty by distress; and for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid. And if any person think himself aggrieved by the judgment of such justice, he may, on giving security to the amount of such penalty and costs, in case such judgment be affirmed, appeal to the next sessions, whose determination shall be final, and they may award costs as to them shall seem meet. *s.* 20. 22.

Appeal.

Witnesses not
appearing.

Witnesses not appearing, having been duly summoned, without reasonable cause to be allowed by such justice, shall forfeit 40 s. to be recovered in like manner. *s.* 23.

Conviction.

And the justice before whom any offender shall be convicted as aforesaid, shall cause the conviction to be made out in the following form, or to the same effect:

Be it remembered, that on the — day of — in the year of our Lord — in the county of — A. O. of — was convicted before me I. P. one of his majesty's justices of the peace for the said county, residing near the place where the offence was committed, for that the said A. O. on the — day of — now last past, did, contrary to the form of the statute in that case made and provided, [here state the offence;] and I do declare and adjudge, that he the said A. O. hath forfeited the sum of — of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs. Given, &c. s. 24.

Application of
the penalties.

All penalties, if sued for within *six* months of the time of being incurred, shall be distributed half to the king, and half with full costs to the person who shall inform and sue: If after *six* months, the whole shall go to the king. *s.* 19. 21.

Mitigation.

Provided nevertheless, that where such justice shall see cause, he may mitigate such penalties, so as not to reduce the same lower than one moiety over and above the costs, *s.* 25.

(A) *Schedule of Medicines subject to the Duties.*

Analeptick Pills, Doctor James's.	Hooper's Female Pills.
Ague and Fever Drops.	Holdsworth's Lozenges.
Anderfon's Scotch Pills.	Hunter's Elixir.
Andalusia Water.	——— Restorative.
Anodyne Necklace.	James's Fever Powder.
Antipertussis.	Jesuit Drops.
Antirheumatic Drops.	Johnson's Yellow Ointment.
Balsamic Electuary.	Keyser's Pills.
Bateman's Drops.	Leake's Pills.
Betton's original British Oil.	Lozenges of Blois.
Beaume de Vie.	——— of Tolu.
Birt's Martial Balsam.	——— Stomachick.
Bostock's Grand Elixir.	——— Specifick.
Cox's Tincture.	——— for the Heartburn.
Daffy's Elixir.	Lockyer's Pills.
Dalby's Carminative.	Le Cour's Imperial Oil.
Dawson's Lozenges.	Norton's Maredant's Antiscorbutic Drops.
Dr. Dickinson's Cephalick Drops.	Norris's Drops.
Edward's Ague Tincture.	Peter's Tincture.
Essence of Water Dock.	——— Pills.
Falck's Universal Pills.	Peke's Ointment.
Freeman's Bathing Spirits.	Ratcliff's Elixir.
Fryar's Balsam.	Spillsbury's Antiscorbutick Drops.
Fendon's Drops.	Speediman's Stomach Pills.
Godfrey's Cordial.	Spirits of Scurvy Grass.
Grant's Drops.	Stomachick Lozenges.
Griffin's Tinctura Asthmatica.	Stoughton's Elixir.
Hickman's Pills.	Stern's Balsamic Æther.
Hill's Pectoral Balsam of Honey.	Squire's Elixir.
—— Tincture of Sage.	Steers's Opodeldock.
—— Tincture of Valerian.	——— Oil.
—— Essence of Water Dock.	——— Purging Elixir.
—— Elixir of Bardana.	Tuberosa Vitæ, or Chilblain Water.
—— Tincture of Cantuary.	Turlington's Balsam.
—— Canada Balsam.	Vandour's Nervous Pills.
Hamilton's Cinnamon Drops.	Velno's Vegetable Syrup.
—— Asthmatick Effluvia.	Wace's Asthmatick Drops.
——— Vegetable Balsamick Tincture.	Ward's White Drops.
	——— Essence for the Head Ach.

Medicines.

Ward's Liquid Sweet.	Ward's Paste.
— Red Pills.	Worm Cakes, Storey's.
— Sack Drops.	Worm Sugar Plumbs.
— Sweating Powders.	Wray's Ague Pills.

Metbeglin. See *Extrite*.

Militia (Old).

All former acts
repealed.

BY the 26 G. 3. c. 107. f. 135. all former acts relating to the militia are from 24th September 1786 repealed, (except such acts as relate to the city of London, the Tower Hamlets, and the Cinque Ports). And the militia raised by such former acts shall be subject to this act.

Nevertheless as the militia within these places specified doth make up a most considerable and necessary part of the whole militia of the kingdom; it is judged requisite to insert first of all the ancient militia laws as they stood before, and then to insert the new militia laws as they stand upon this present act.

- I. Of the appointing lieutenants and deputy lieutenants.
- II. Constituting inferior officers.
- III. Persons chargeable to find soldiers.
- IV. Inlisting.
- V. Mustering, training, and leading.
- VI. Trophy money; for ammunition, carriages, and other necessaries.
- VII. Power to search for arms.
- VIII. Punishment for desertion or disobedience.
- IX. Punishment for imbezilling horse or furniture.
- X. Officers pay.
- XI. Soldiers pay.
- XII. Penalties how recoverable.

I. Of the appointing lieutenants and deputy lieutenants:

The king may issue commissions to such persons as he shall think fit, to be lieutenants for the several counties, cities, and places: 13 & 14 C. 2. c. 3. f. 2.

Which lieutenants shall present to his majesty the names of such persons as they shall think fit, to be deputy lieutenants; and upon his majesty's approbation of them, shall give them deputations accordingly: always understood, that the king have power to direct and order otherwise; and accordingly at his pleasure may appoint and commissionate or displace such officers. *id.*

And the said deputy lieutenants shall obey such orders as they shall receive from the lieutenants. *id.* f. 13.

But no peer shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first, before six of the privy council, or such others as shall be authorized by the king, take the oaths of allegiance and supremacy. *id.* f. 18. 1 W. Jeff. 1. c. 8. f. 11.

And no person under the degree of a peer shall be capable of acting as lieutenant or deputy lieutenant, unless he shall first take the said oaths; which oaths, any one justice of the county or place may administer to such lieutenant as is not a peer; and the said lieutenant, or any one such justice, may administer the same to the deputy lieutenants not being peers. 13 & 14 C. 2. c. 3. f. 19.

II. Constituting inferior officers.

The lieutenants may give commissions to such persons as they shall think fit to be colonels, majors, captains, and other commission officers. 13 & 14 C. 2. c. 3. f. 2.

Which officers likewise, before they shall be capable of acting, shall first take the said oaths; to be administered by the lieutenants, and in their absence, or by their directions, the deputy lieutenants, or any two of them, *id.* f. 19.

Always understood, that his majesty shall have power to order otherwise, and accordingly at his pleasure may appoint and commissionate, or displace such officers. *id.* f. 2.

III. Persons chargeable to find soldiers.

The lieutenants and deputies, or the major part of them then present, or in the absence of the lieutenant, the major part of the deputy lieutenants then present, which major part shall be three at least, shall have power to charge any person, in the county, city, or town corporate, where his estate lies, having respect unto, and not exceeding the following proportions, *viz.*

I 2

No

Who chargeable
with horse,

No person shall be charged with finding a horse, horseman, and arms, unless he have a revenue of 500 l. a year in possession, or an estate of 6000 l. in goods or money, besides the furniture of his house; and so proportionably for a greater estate, as they shall see cause, and think reasonable. 13 & 14 C. 2. c. 3. §. 3.

Who chargeable
with foot.

And they shall not charge any person with finding a foot soldier and arms, that hath not a yearly revenue of 50 l. in possession, or a personal estate of 600 l. in goods or money, other than stock upon the ground; and after the said rate proportionably for a greater or lesser revenue or estate. *id.*

But they may require the constables to furnish, at a reasonable time and place to be appointed, on a penalty not exceeding 40 s. so many sufficient arms, with wages and other incident charges, as they shall assess according to the said proportions, upon revenue under 50 l. a year, or on personal estates less than 600 l. And in order thereunto, if any person shall on demand refuse or neglect to provide a foot soldier or soldiers according to the proportions aforesaid, or to pay any sums of money whereat he shall be assessed by a pound rate (according to a list signed by the lieutenants and deputies, or three of them) towards defraying the necessary charge in providing such arms as aforesaid, the constable by warrant may levy such sum by distress and sale, rendering the overplus, charge of distraining being first deducted: and the tenant shall pay the same, and deduct it out of his next rent; and in default thereof, his goods also shall be liable to be distrained and sold. 15 C. 2. c. 4. §. 4, 5.

But no person having an estate of 200 l. a year, or personal estate of 2400 l. shall be charged with finding any foot. §. 18.

Who may be
charged either
with horse or
foot.

And they may charge any person having an estate of 100 l. a year, and under 200 l. or who hath a personal estate of 1200 l. and under 2400 l. towards the finding of foot and horse, as to them shall seem most expedient. §. 18.

None chargeable
with both horse
and foot.

But they shall not charge any person with finding both horse and foot in the same county. 13 & 14 C. 2. c. 3. §. 3.

Two or more
may be charged
together.

And they may impose the finding of horse, horseman, and arms; by joining two, three, or more persons together in the charge. §. 4.

But no person not having 100 l. a year in possession in lands, leasehold or copyhold, or 1200 l. personal estate, shall

shall be compellable to contribute in finding any horse and horseman. *f. 5.*

And no person chargeable to find a horse and horseman, or to be contributory thereunto, shall for the same estate be chargeable towards finding a foot soldier with arms, or contributory thereunto. *f. 4.*

Where two or more are charged to find any horse or foot soldier and arms, three deputy lieutenants may appoint who shall find the same, and who shall be the contributors, and settle the sums to be paid by every contributor in case the same contribution be not ascertained by agreement of the parties. 10 & 11 W. c. 12. *f. 3.*

And for the better discovery of the ability of the persons to be assessed and charged, and of all misdemeanors tending to the hindrance of the service, they may examine on oath such persons as they shall judge necessary or convenient, or shall be produced by the party charged or accused, other than the persons themselves to be assessed or accused. 13 & 14 C. 2. c. 3. *f. 11.*

And they may hear complaints, and give redress, according to the merits of the cause. *f. 5.*

No peer shall be charged otherwise than as follows, viz. the king may issue out commissions under the great seal, to so many peers (not fewer than 12) as he shall think fit; who, or any 5 of them, shall have power to assess all or any peers, according to the proportions herein mentioned (except the monthly taxes hereafter following) and to execute all the powers of this act, as well for laying assessments, as imposing of penalties (imprisonment only excepted). Which assessment or charge so made, and penalties imposed, shall be certified to the lieutenants. And in case of default in performance of any thing to be done or paid by any peer, the lieutenant and deputies, or any three of them, may cause distresses to be taken in the lands of such defaulter; and if satisfaction shall not be made in one week after such distress taken, then the same to be sold: and if a tenant be distrained, he may deduct the sum levied out of his next rent. *f. 33.*

Every commissioned foot officer shall be exempted from finding, or contributing to find, any horse or foot soldier, for his whole estate, if it is but charged with one horse, or a less charge, or for such part of his estate, as is charged with one horse, if his whole estate be charged with a greater charge than one horse in the county or lieutenancy where he so serves as a foot officer, in respect of the expence

Person chargeable with horse not to be charged with foot.

Who shall find and who contribute.

Persons may be examined on oath.

Hearing and determining complaints. Peers how to be charged.

Officers how chargeable.

pence which the said employment doth necessarily engage him in. 15 C. 2. c. 4. f. 9.

Papists how to be charged.

Where any papist, reputed papist, or other person refusing to take the oaths, is chargeable in respect of his estate, the lieutenant, or in his absence the deputies, or three of them, may appoint such person as they shall think most meet, to furnish the same; and may charge the same estate with the payment of the yearly sum of 8l. for a horse, horseman, and arms, and of 30s. for a foot soldier and arms. And if he shall not pay the same on demand, they may by their warrant levy the same by distress and sale of the goods of such person, or of his tenants, rendering the overplus, all necessary charges in levying thereof being first deducted; and such tenant shall deduct the same out of his rent. 15 & 11 W. c. 12. f. 2.

Person residing out of the liberty, how to be charged.

Where any person shall be charged in the county, city, or place, where he doth not reside, they shall send notice of the charge, if he have any land in his own occupation, to such person as he employs as his servant in managing the same; and if all his estate be let to farm, then to one or two of the most sufficient tenants; who shall forthwith, with all convenient speed, convey the same to their master or landlord; and in such time as shall be appointed, bring an account of his answer: And on neglect or refusal of the landlord, to provide such horse or foot, as is duly charged upon him, for the yearly rent reserved upon every demise or other grant, and not otherwise, within the time limited; then the tenant shall provide and do, as the landlord in that behalf ought to have done: And if the tenant shall refuse or neglect within the time limited, the lieutenants, and in their absence, or by their directions, the deputies, or two of them, may levy by their warrant all such penalties as are appointed by this act, by distress and sale of the offender's goods. 13 & 14 C. 2. c. 3. f. 16.

And the tenant may default out of his next rent, all such money as he shall necessarily lay out in providing the same, or shall be levied upon him by distress for any default; unless the landlord shall make it appear in two months after such levying, before the lieutenant, or in his absence, or by his direction, the deputies, or any two of them, that the default and penalty was occasioned by the tenant's wilful neglect. f. 17.

But this shall not avoid any covenant between landlord and tenant, concerning the finding horses or arms, or the bearing of any charges by any tenant; but all charges shall

shall be born by such tenant, according to the agreement.

f. 29.

If any person shall refuse or neglect, by a reasonable time to be appointed, to provide such horse, horseman, arms, and other furniture, or to pay such sum towards providing the same as aforesaid; the lieutenants and deputies, or three of them, may inflict a penalty on such person not exceeding 20 l. and by their warrant may levy such sum, or the value of such horse, arms, and furniture, and such penalty inflicted, by distress and sale, rendering the overplus, all necessary charge in levying thereof being first deducted; the same to be employed to the uses in default whereof the same was imposed. f. 9.

Penalty on persons not furnishing.

And if any person shall refuse or neglect, by a reasonable time to be appointed, to provide and furnish such foot soldier and arms as shall be charged upon him; the lieutenants and deputies, or three of them, may inflict a penalty not exceeding 5 l. to be employed to the uses in default whereof it was imposed: And the constable, by warrant for that purpose, may levy such sum by distress and sale, rendering the overplus, charges of distraining being first deducted; and the tenant shall pay the same, and deduct it out of his next rent, and in default thereof his goods also shall be liable to be distrained and sold.

15 C. 2. c. 4. f. 3. 5.

And if any person charged as a contributor, being an inhabitant, shall refuse to pay his proportion on demand; or if he be not an inhabitant, if his tenant shall not pay the same upon demand; three deputy lieutenants, by their warrant, may levy the same by distress and sale, rendering the overplus, all necessary charge in levying thereof being first deducted; and such tenant may deduct the same out of his rent. 10 & 11 W. c. 12. f. 3.

But no person charged with the finding horse, or foot, or with contributing thereunto, shall be compellable to serve in person, but may find one to serve for him, to be approved by the captain; subject nevertheless to be altered upon appeal to the lieutenant, or in his absence to two deputy lieutenants. 13 & 14 C. 2. c. 3. f. 25.

None compellable to serve in person.

IV. Inlisting.

Every man who shall serve in his own person, or such person as shall be accepted in his stead, shall at the next muster of his troop or company, give in his name and place of abode, unto such person as the lieutenant, or in his absence, or by his direction, any two deputy lieutenants shall

4

appoint;

appoint; to the end that the same may be listed. 13 & 14 C. 2. c. 3. f. 25.

But he shall not be capable of acting as a soldier, unless he first take the said oaths above mentioned, to be administered by the lieutenant, or in his absence, or by his direction, the deputy lieutenants, or any two of them. *id.* f. 19.

V. Mustering, training, and leading.

Power to raise
and lead.

By the 13 & 14 C. 2. c. 3. The lieutenants shall have power to call together the militia, and to arm and array them, and form them into companies, troops, and regiments, and in case of insurrection, rebellion, or invasion, them to lead, conduct, and employ, or cause them to be led, conducted, and employed, as well within the several counties, cities, and places for which they shall be commissioned respectively, as also into any other counties and places, for the suppressing of all such insurrections and rebellions, and repelling of invasions, as may happen to be, according as they shall receive directions from his majesty. f. 2.

And by the 15 C. 2. c. 4. The lieutenants, and in their absence, or by their directions, the deputy lieutenants, or two of them, shall have power to lead, train, and exercise, or by warrant under their hands and seals, cause to be led, trained, and exercised, the persons so raised, arrayed, and weaponed. f. 1.

But nothing herein shall extend to the giving any power for marching any subjects out of the realm, otherwise than by the laws of *England* ought to be done. 13 & 14 C. 2. c. 3. f. 32.

Time of mustering.

The ordinary terms for training, exercising, and mustering, shall be these: The general muster and exercise of regiments, not above once a year; the training and exercising of single companies, not above four times a year, unless special directions be given by the king or his privy council; and such single companies and troops shall not at any one time be continued in exercise above the space of two days; and at a general muster and exercise of regiments, no officer or soldier shall be constrained to stay above four days together from their habitations. *id.* f. 21.

Accoutrements.

At every such muster and exercise, every musqueteer shall bring with him half a pound of powder, and half a pound of bullets; and every musqueteer that shall serve with a matchlock, shall bring with him three yards
of

of match; and every horseman shall bring with him a quarter of a pound of powder, and a quarter of a pound of bullets; all which shall be at the charge of him who provides the said soldier and arms: on pain of 5 s. for every omission. 13 & 14 C. 2. c. 3. f. 21. 15 C. 2. c. 4. f. 7.

And the arms offensive and defensive, with the furniture for horse, shall be as follows: the defensive arms, a back, breast, and pot, pistol proof; the offensive arms, a sword and a case of pistols, the barrels not under 14 inches in length; the furniture for the horse, a great saddle or pad with burs and straps to fix the holsters unto, a bit and bridle, with a pectoral and crupper: for the foot, a musqueteer shall have a musquet, the barrel not under three foot in length, and the gauge of the bore to be for twelve bullets to the pound, a collar of bandileers, with a sword: a pike-man to be armed with a pike of ash, not under 16 foot in length (head and foot included) with a back, breast, head-piece, and sword. 13 & 14 C. 2. c. 3. f. 21.

The muster master shall be an inhabitant of the county. *Muster master.* 15 C. 2. c. 4. f. 6.

And once a year each soldier shall pay to him such sum, not exceeding 1 s. for a horseman, and 6 d. for a footman, as the lieutenants, and deputies, or three of them, shall under their hands and seals direct; who shall have power to levy the same, by distress and sale of the goods of the persons charged to find such horseman, or foot soldier, unless the default be by the neglect of such soldier, who in that case shall be accountable for the same. *id.*

If any person charged shall refuse or neglect to send in, or deliver his horse, arms, or other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants, and deputies, or three of them, may inflict a penalty not exceeding 5 l. to be levied by distress and sale, rendering the overplus, necessary charges for levying being first deducted. 13 & 14 C. 2. c. 3. f. 10.

Penalty on not furnishing.

Provided, that no officer or soldier of the militia, belonging to any city, borough, or town corporate, being a county of itself, or to any other corporation or port town, who have used to be mustered only within their own precincts, shall be compellable to appear out of such precincts at any muster or exercise only. f. 28.

Exception as to corporations.

VI. Trophy money for ammunition, carriages, and other necessities.

And for furnishing ammunition and other necessities, the lieutenants and deputies, or three of them, shall have power to lay rates on the respective counties and places, not exceeding in the whole in any one year the proportion of a fourth part of one month's assessment in each county, after the rate of 70,000*l.* a month, charged by the act of the 12 C. 2. c. 29. Which shall be assessed, collected, and paid by such persons, and according to such directions as shall be given by the lieutenants and deputies, or three of them; under the like penalties, and by the like ways and means, as are prescribed in the said act. 13 & 14 C. 2. c. 3. s. 7.

Which said act of the 12 C. 2. c. 29. directs the sum of 70,000*l.* a month to be raised in the like manner, as by the act of the 12 C. 2. c. 21. which act did direct the same to be raised, according to the proportions, and in such manner as by an ordinance of both houses made in his majesty's absence: Which ordinance was as followeth;

That is to say, there shall be raised an assessment of 70,000*l.* a month, in these proportions,

On the county of

	<i>l.</i>	<i>s.</i>	<i>d.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Bedford</i> -	933	6	8	<i>Hertford</i> -	1400	0	0
<i>Berks</i> -	1088	17	10	<i>Huntingdon</i> -	622	4	6
<i>Buckingham</i> -	1283	6	8	<i>Kent</i> -	3655	11	2
<i>Cambridge</i> -	1102	10	0	<i>Lancaster</i> -	933	6	8
<i>Isle of Ely</i> -	367	10	0	<i>Leicester</i> -	1088	17	8
<i>Chester county</i> -	770	0	0	<i>Lincoln</i> -	2722	4	10
<i>City</i> -	85	11	2	<i>Middlesex</i> -	1788	17	10
<i>Cornwall</i> -	1633	6	8	<i>London</i> -	4666	13	4
<i>Cumberland</i> -	108	0	0	<i>Northampton</i> -	1400	0	0
<i>Derby</i> -	933	6	8	<i>Nottingham</i> -	903	4	4
<i>Devon</i> -	3003	15	6	<i>Town</i> -	30	2	4
<i>Dorset</i> -	1311	10	6	<i>Norfolk</i> -	3624	8	10
<i>Town of Pool</i> -	10	14	0	<i>Norwich</i> -	186	13	4
<i>Durham</i> -	153	14	4	<i>Northumberland</i> -	179	19	10
<i>Essex</i> -	3500	0	0	<i>Newcastle</i> -	35	11	8
<i>Gloucester</i> -	1626	6	8	<i>Oxon</i> -	1127	15	6
<i>City</i> -	162	11	2	<i>Oxford city</i> -	107	6	8
<i>Hereford</i> -	1166	13	4	<i>Rutland</i> -	272	4	6

Salop

	<i>l.</i>	<i>s.</i>	<i>d.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Salop</i> - -	1322	4	4	<i>Kingston</i> -	67	13	4
<i>Stafford</i> -	919	6	8	<i>Anglesea</i> -	135	14	4
<i>Litchfield</i> -	14	0	0	<i>Brecknock</i> -	361	13	4
<i>Somerset</i> -	2722	4	6	<i>Cardigan</i> -	213	10	0
<i>Bristol</i> -	171	2	2	<i>Carmarthen</i> -	352	6	8
<i>Southampton</i>	2022	4	4	<i>Carnarvon</i> -	202	4	4
<i>Suffolk</i> -	3655	11	2	<i>Denbigh</i> -	272	4	6
<i>Surry</i> - -	1565	5	6	<i>Flint</i> - -	135	14	6
<i>Southwark</i>	184	14	6	<i>Glamorgan</i> -	458	17	8
<i>Sussex</i> - -	1905	11	2	<i>Merioneth</i> -	124	8	10
<i>Warwick</i> -	1244	8	10	<i>Monmouth</i> -	466	13	4
<i>Westmorland</i> -	73	19	4	<i>Montgomery</i> -	295	11	0
<i>Wilt</i> - -	1944	8	10	<i>Pembroke</i> -	406	0	0
<i>Worcester</i> -	1182	4	4	<i>Radnor</i> - -	254	6	8
<i>City</i> - -	62	4	6	<i>Haverford West</i>	14	11	8
<i>York</i> - -	3043	8	10	<i>Berwick</i> - -	5	16	8

And the commissioners shall cause the proportions to be equally assessed; and appoint assessors in each parish, who shall assess the same by a pound rate, according to all estates both real and personal, within the limits of their parishes.

And in case the way of assessing by a pound rate shall prove obstructive to the speedy bringing in of the assessment; the commissioners may direct the assessors to assess the same, according to the most just and usual way of rates practised in such places. Provided that the apportionment of the assessment shall not be drawn into precedent.

And no privileged place shall be exempted from the assessment.

But nothing contained in this ordinance shall charge any matter, fellow, or scholar of any college in either of the universities, or of *Winchester, Eaton, or Westminster*, or in any other free schools, or any reader, officer, or minister of the same, or of any hospitals, or almshouses, in respect of any profit arising in respect of the said places; nor charge any houses or lands belonging to *Christ's hospital, Bartholomew, Bridewell, Thomas, and Bechelem*: But their tenants shall pay for so much as their leases are yearly worth, over and above the rents reserved.

Persons in *London* shall be assessed in the parishes where they dwell: And persons out of *London*, having any office in *London*, shall be assessed where they dwell.

And the assessors shall deliver one copy of the assessment unto the commissioners; who shall sign and seal two duplicates, and deliver one to the sub-collectors, with warrant

rant to collect; and deliver the other to the receiver general.

And if any difference arise between landlord and tenant concerning the rates, the commissioners shall settle the same; and persons aggrieved by being over-rated, on complaint in six days after demand to the commissioners who allowed the assessment, may by them be relieved.

And if any controversy shall arise which concerns any of the commissioners he shall withdraw.

On non-payment, the collectors may distrain; and in the day-time, taking with them the constable, may break open any house, chest, or box where the goods are. And if any question arise upon the taking such distress, the same shall be determined by the commissioners.

And if persons convey their goods, the commissioners may imprison them (not being peers) till payment; and tenants may deduct the same out of their rent.

And if the proportions be not fully paid, nor can be levied, the commissioners may re-assess.

And if any person shall wilfully neglect to perform his duty in the execution of this ordinance, the commissioners may fine him, not exceeding 20l.; to be levied by distress, and paid to the receiver-general.

And the receiver-general shall have 1 d. in the pound; the sub collectors 1 d. the head collectors 1 d. and the commissioners clerks 1 d.

But nothing herein shall be drawn into example, to the prejudice of the ancient rights belonging to the peers.

And the same power which the commissioners had by this ordinance (which is much in the manner of the ancient subsidies, and of the present land tax), the lieutenants and deputy lieutenants seem to have by the act of the 13 & 14 C. 2.

And the lieutenants and deputies, or the chief officers upon the place, in the respective counties and places, may charge carts, waggons, wains, and horses, for the carrying of powder, match, bullet, and other materials, allowing 6 d. a mile outward only, to every such cart, waggon and wain with five horses, or six oxen, and so proportionably; and for every horse employed out of waggon or cart 1 d.; upon the marching of any regiment, company, or troop, on occasion of invasion, insurrection or rebellion. 13 & 14 C. 2. c. 3. s. 8.

And the lieutenants shall appoint one or more treasurers, or clerks for receiving and paying such monies when levied; of all which receipts and disbursements thereof, they shall every six months give their accounts in writing upon oath,

oath, to the lieutenants and deputies, or three of them; which account shall be forthwith certified to the privy council, and a duplicate thereof shall be certified to the justices at the next sessions. *id.* *f.* 12.

Always provided, that the lieutenants or their deputies shall not issue warrants for raising any trophy money, till the justices in sessions shall have examined, stated, and allowed the accounts of the trophy money collected for any preceding year, and certified such examination under the hands and seals of three or more such justices. 10 *An.* c. 25. *f.* 4.

VII. Power to search for arms.

The lieutenants, or two of their deputies, may, by warrant under their hands and seals, employ such persons as they shall think fit (of which a commissioned officer, and the constable or his deputy, or in their absence some other person bearing office in the parish where the search shall be, shall be two) to search for and seize all arms in the custody of any person, whom the lieutenants or two of their deputies shall judge dangerous to the peace of the kingdom, and to secure the same, and thereof to give account to the lieutenants, and in their absence, or by their directions, to the deputies, or two of them: Provided, that no search be made in any house between sun-setting and sun-rising, other than in cities or their suburbs, and towns corporate, market towns, and houses within the bills of mortality, where they may search in the night time, if the warrant so direct; and in case of resistance, may enter by force: And no dwelling-house of a peer shall be searched, but by immediate warrant from the king, or in the presence of the lieutenant or a deputy lieutenant: And in all places and houses whatsoever where search is to be made, it shall be lawful, in case of resistance, to enter by force. And the arms so seized may be restored to the owners again, if the lieutenants, or in their absence as aforesaid, their deputies, or two of them, shall so think fit. 13 & 14 *C.* 2. c. 3. *f.* 14.

VIII. Punishment for desertion or disobedience.

If any of the said militia shall not appear and serve, completely furnished with horse and arms and other furniture, at the beat of drum, sound of trumpet, or other summons; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person,

Militia (Old).

person, may imprison him for five days; or may inflict a penalty, if he is a horseman, not exceeding 20 s. and if a footman, not exceeding 10 s. to be paid down without delay. 13 & 14 C. 2. c. 3. f. 10.

And the lieutenants, or deputies, or chief officers upon the place, may imprison musketeers, and such soldiers as do not their duty at the days of muster and training; and may inflict for punishment for every such offence, any pecuniary mulct not exceeding 5 s. or imprisonment not exceeding twenty days. f. 8.

And such person duly listed, shall not be exchanged, or desert, or be discharged, but by the leave of the lieutenant, or two deputies, or his captain, upon reasonable cause, first obtained in writing under hand and seal; on pain of 20 l. to be levied as other penalties; and for non-payment or want of distress, to be committed to the common gaol of the county, not exceeding three months. *id.* f. 25.

IX. Punishment for imbezilling horse or furniture.

If any person shall detain or imbezil his horse, arms, or furniture; the lieutenants, and in their absence, or by their directions, the deputies, or two of them, if the default be in such person, may imprison him till he have made satisfaction. 13 & 14 C. 2. c. 3. f. 10.

X. Officers pay.

For satisfaction of the officers of their pay, during such time (not exceeding one month) as they shall be with their soldiers in actual service, provision shall be made by the king out of the treasury. 13 & 14 C. 2. c. 3. f. 7.

And the lieutenants and deputies, or three of them, shall have power to dispose of so much of the said fourth part of the 70,000 l. a month, to the inferior officers, for their pains and encouragement, as to them shall seem expedient. 15 C. 2. c. 4. f. 12.

XI. Soldiers pay.

Every person charged shall (on pain of 5 s.) pay on demand 2 s. 6 d. a day to each trooper, and shall (on pain of 2 s.) pay on demand 1 s. a day to each foot soldier, for so many days as they shall be absent from their dwellings or callings, by occasion of muster or exercise, unless some certain agreement be made to the contrary before good witness; and the said penalty is to be paid to such soldier,

to whom his pay was denied ; the respective penalties to be demanded in six weeks after default, or at or before the next muster or exercise, and not afterwards. 15 C. 2. c. 4. f. 2.

And in case of invasions, insurrections, or rebellions, whereby occasion shall be to draw out such soldiers into actual service ; the persons so charged shall provide each their soldier with pay in hand not exceeding one month's pay, as shall be directed by the lieutenants, and in their absence, or by their directions, by the deputies or any two of them. 13 & 14 C. 2. c. 3. f. 7.

For the repayment whereof, provision shall be made by the king out of the treasury. *id.*

And in case a month's pay shall be provided and advanced as aforesaid, no person who shall have advanced his proportion thereof, shall be charged with any other like month's payment, until he shall have been reimbursed the said month's pay ; and so from time to time, the month's pay by him last before provided and advanced. *id.*

XII. Penalties how recoverable.

The forfeitures, penalties, and payments by the 15 C. 2. c. 4. not otherwise herein directed, may be recovered by warrant under the hands and seals of the lieutenants and deputies, or three of them, by distress and sale ; and if sufficient distress cannot be found, then the party to be imprisoned till satisfaction shall be made. 15 C. 2. c. 4. f. 16.

And all high and petty constables, and other officers and ministers, shall be aiding and assisting to the lieutenants and their deputies, or any of them. 13 & 14 C. 2. c. 3. f. 15.

Militia (New).

BY 26 G. 3. c. 107. All former acts relating to the militia are from 24th Sept. 1786, repealed (except such acts as relate to the city of London, the Tower Hamlets, and the Cinque Ports). And the militia raised by such former acts shall be subject to this act. f. 135.

All former acts repealed.

The substance whereof it is endeavoured to comprise under the following heads :

I. Appoint-

Militia (New).

- I. Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the service, and forming the militia into regiments and companies.
- II. Number of men to be raised in the several counties.
- III. Issuing precepts to return lists.
- IV. Return and settling of the lists.
- V. Proportioning the numbers in the several hundreds, &c. or altering the subdivisions.
- VI. Proportioning in the several parishes, tithings, or places.
- VII. Balloting.
- VIII. Swearing and inrolling; and therein, of substitutes.
- IX. Inlisting and beating up for volunteers.
- X. Training and exercise.
- XI. Cloathing and pay.
- XII. Drawn out into actual service.
- XIII. Privileges and exemptions of militia men.
- XIV. Punishment for disobedience or desertion.
- XV. Proceedings where the militia shall not be raised annually.
- XVI. General power of enforcing the execution hereof.
- XVII. Exception with respect to particular places.

I. Appointment of the lieutenants, deputy lieutenants, officers, and others, for execution of the service, and forming the militia into regiments and companies.

Appointment of the lieutenants, deputy lieutenants, and commission officers.

The king shall appoint lieutenants for the several counties, ridings, and places; and such lieutenant shall have the chief command of the militia within the county, riding, or place to which he is appointed; and shall call together, arm, and array them, once in every year, in such manner as is herein-after directed. And such lieutenants shall from time to time, appoint twenty or more such persons as they shall think fit, if so many can be found, if not, as many as can be found, being qualified as herein-after is directed, and living within their respective counties, ridings, and places, to be their *deputy lieutenants* (the names of such persons having been first presented to, and approved by his majesty): And shall also appoint a proper number

of colonels, lieutenant colonels, majors, and other officers, qualified as herein after directed; and shall certify to his majesty the names and ranks of all such officers so appointed, and in case his majesty shall, within 14 days after such certificate shall have been laid before him, signify his disapprobation of any of such persons, the lieutenant shall not grant to him a commission, but shall grant commissions to such persons so appointed, who shall not be disapproved by his majesty. 26 G. 3. c. 107. s. 1. 4.

And the officers so appointed for the militia shall rank with the officers of such of his majesty's forces as are liable to serve out of *Great Britain*, as youngest of their rank. *f. 1.*

And when the lieutenant shall be out of the kingdom of *Great Britain*, or there shall be no lieutenant, the king may authorize any three deputy lieutenants to grant commissions to officers, on any vacancy that shall then happen; and to do all other things which might have been done by the said lieutenant, and which shall be as valid in law as if done by the lieutenant himself. *f. 2.*

Provided that no deputation or commission shall be vacated by the revocation, expiration, or discontinuance, of the lieutenant's commission. *f. 3.*

And every person so to be appointed a *deputy lieutenant*, shall be seised or possessed, either in law or equity, for his own use and benefit, in possession, of a freehold, copyhold, or customary estate for life, or for the life of his wife, she having a freehold, copyhold, or customary estate for her life, or for some greater estate, or of an estate for some long term of years determinable on one or more lives, in manors, messuages, lands, tenements, or hereditaments, in *England, Wales, or Berwick upon Tweed*, of the yearly value of 200 l. or shall be heir apparent of some person who shall be in like manner seised or possessed of a like estate of the yearly value of 400 l. *Colonel* shall be seised or possessed of a like estate of the yearly value of 1000 l. or shall be heir apparent to some person who shall be seised or possessed of a like estate of the yearly value of 2000 l. *Lieutenant colonel* shall be seised or possessed of a like estate of 600 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 1200 l. *Major* or *captain* shall be seised or possessed of a like estate of the yearly value of 200 l. or shall be heir apparent of some person who shall be seised or possessed of a like estate of the yearly value of 400 l.; or shall be a younger son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the

Rank of officers.

Lieutenant being absent, or lieutenantancy vacant

General qualifications of the officers.

yearly value of 600 l. *Lieutenant* shall be in like manner seised or possessed of a like estate of the yearly value of 50 l. or personal estate alone of the value of 1000 l. or real and personal estate together of the value of 2000 l. ; or son of a person who shall be or at the time of his death was seised or possessed of a like estate of the yearly value of 100 l. or personal estate alone of the value of 2000 l. or real and personal together of the value of 3000 l. *Ensign* shall be seised or possessed of a like estate of the yearly value of 20 l. or personal estate alone of the value of 500 l. or real and personal together of the value of 1000 l. ; or shall be son of some person who shall be or at the time of his death was seised or possessed of a like estate of the yearly value of 50 l. or personal estate alone of the value of 1000 l. or real and personal together of the value of 1500 l. One moiety of which said estates, required as qualifications for each deputy lieutenant, colonel, lieutenant colonel, major, and captain respectively, shall be situate or arising within such respective county or riding in which he shall be appointed to serve. *s. 5.*

Provided, that the immediate reversion or remainder of and in manors, messuages, lands, tenements, or hereditaments, which are leased for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, on reserved rents, and which are to the lessees of the clear yearly value of 300 l. shall be deemed equal to an estate herein-before described, of the yearly value of 100 l. and so in proportion. *s. 9.*

Also a person possessed, either in law or equity, for his own use and benefit, in possession of an estate, for a certain term originally granted for 20 years or more, of an annual value (over and above all rents and charges payable out of or in respect of the same) equal to the annual value of such an estate as is required for the qualification of a deputy lieutenant and commissioned officer respectively, and situate as aforesaid, shall be deemed sufficiently qualified. *s. 10.*

Qualification in
the smaller coun-
ties.

In the several counties of *Cumberland, Huntingdon, Monmouth, Westmoreland and Rutland*, and in every county and place in *Wales*, the estates requisite for the qualification of the deputy lieutenants and officers shall be as follows : A *deputy lieutenant* shall be seised or possessed of a like estate as aforesaid of the yearly value of 150 l. or shall be heir apparent of a person having a like estate of 300 l. *Colonel* 600 l. ; or heir apparent of a person having a like estate of 1200 l. *Lieutenant colonel* or *major commandant* 400 l. ; or heir apparent of a person having a like estate of 800 l. *Major* or *captain* 150 l. ; or son of a person having or who had

had at the time of his death a like estate of 300 l. *Lieutenant* 30 l. or personal estate alone of 600 l. or real and personal together of the value of 1200 l.; or son of a person having or who had at the time of his death a like estate of the yearly value of 60 l. or personal estate of the value of 1200 l. or real and personal together of 2400 l. *Ensign* 20 l.; or personal estate alone of 300 l. or real and personal together of 600 l. or son of a person having or who had at the time of his death a like estate of the yearly value of 30 l. or personal estate of the value of 600 l. or real and personal together of 1200 l. One half of all which estates, except those for the qualifications of lieutenants and ensigns, shall be situate or arising in their respective counties. *f. 6.*

In the isle of *Ely*, a *deputy lieutenant* shall be seised or possessed of a like estate of the yearly value of 150 l. or shall be heir apparent to a person having a like estate of 300 l. *Captain* 100 l. or heir apparent of a person having a like estate of 200 l. or younger son of a person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 300 l. *Lieutenant* 30 l. or personal estate of 600 l. or son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of 60 l. or personal estate of 1200 l. *Ensign* 20 l. personal estate of 300 l. or son of some person who shall be, or at the time of his death was, seised or possessed of a like estate of the yearly value of 30 l. or personal estate of 600 l. One half of all which estates, except those for the qualification of lieutenants and ensigns, shall be situate or arising within the said isle, or some other part of the county of *Cambridge*. *f. 7.*

In the isle of
Ely.

In all cities or towns which are counties within themselves, and have heretofore used to raise and train a separate militia within their respective liberties, and which are united with and made part of any county for the purposes of raising the militia only; the lieutenant of every such city or town, or where there is no lieutenant appointed, the chief magistrate of such city or town, shall appoint the deputy lieutenants, and shall also appoint officers of the militia, whose number and rank shall be proportionable to the number of militia men which such city or town shall raise, as their quota towards the militia of the county to which such city or town is united for the purposes aforesaid; and all powers and provisions made with respect to counties at large, shall take place in the said cities or towns. And the qualification for a *deputy lieutenant* shall be 150 l. a year as aforesaid; or a personal estate alone, or real and

In cities or towns
being counties
within them-
selves.

personal, estate together, to the amount or value of 3000*l*. *Field officer* 300*l*.; or personal estate alone, or real and personal together, to the value of 5000*l*. *Captain* 150*l*. a year; or personal estate alone, or real and personal together, to the value of 2500*l*. *Lieutenant* 30*l*. a year, or personal estate of 750*l*. *Ensign* 20*l*. a year, or personal estate of 400*l*. One half of all which real estates (except those for the qualification of lieutenants and ensigns) shall be within such city or town, or within the county to which such city or town is united for the purposes aforesaid. *f. 8.*

No commission above a lieutenant to be granted until the qualification is delivered.

But no person shall be appointed a *deputy lieutenant*, nor to a higher rank than that of *lieutenant*, until he shall have delivered in to the clerk of the peace or his deputy, a specifick description in writing, signed by himself, of his qualification; stating the parish in which the estate which forms such qualification is situate: and such clerk of the peace shall transmit to the lieutenant a copy of such description; and no commission hereafter granted for a higher rank than that of lieutenant shall be valid, unless it be declared in the commission, that such officer hath delivered in his qualification as above directed. *f. 11.*

Former commissions to be void, unless qualifications have been or shall be delivered before 1st Jan. 1787.

And every *deputy lieutenant* and officer then holding a commission as *colonel*, *lieutenant colonel*, *major*, or *captain*, who had not transmitted a specifick description as before directed, is required before the 1st day of Jan. 1787, to transmit such description to the clerk of the peace, in manner as aforesaid, and such clerk of the peace forthwith to transmit a copy thereof to the lieutenant (or to the deputy lieutenants authorised as aforesaid to execute the office of lieutenant); and in case any such officer should not transmit such description within the time before limited, his deputation or commission is declared void, and himself incapable of being a deputy lieutenant, or of serving as an officer in the militia again in the same or any higher rank. *f. 12.*

Further time given.

But by the 31 G. 3. c. 8. *f. 7.* Further time is given to such *deputy lieutenants* and *officers* who had neglected to transmit such description of their qualification as aforesaid, provided they delivered the same on or before 1st Sept. 1791, and they are indemnified from all penalties, forfeitures, incapacities, and disabilities, incurred by reason of such omission or neglect.

Repealing the former acts, not to annul commissions where the parties are legally qualified.

Provided nevertheless, that any commission of *lieutenancy*, or other commission already granted by virtue of any former acts, shall not be annulled by the repeal of those acts, but the persons to whom such commissions have been

been granted, may act in like manner as if this act had not been made; but no person shall act as deputy lieutenant, colonel, lieutenant colonel, major, or captain, by virtue of any commission already granted, unless he is qualified as aforesaid, and unless he has delivered, or shall deliver such description thereof as aforesaid. 26 G. 3. c. 107. s. 136.

Qualifications to be inserted in the Gazette.

And the clerk of the peace shall enter such qualification so transmitted to him upon a roll to be kept for that purpose, and shall cause to be inserted in the *Gazette* the dates of the commissions, and names and rank of the officers, together with the names of the officers in whose room they are appointed, in like manner as commissions in the army are published from the War-office; and the expence of such insertion shall be paid by the treasurer of the county; and such clerk of the peace shall in *January*, yearly, transmit to one of the secretaries of state a complete account of the qualifications so left with him, to be laid before parliament: And every deputy lieutenant and commissioned officer not having already taken and subscribed the oaths, and made and subscribed the declaration as required by this act; shall at some general quarter sessions, or in one of the courts at *Westminster*, within six months after he shall have accepted his commission, take the oaths, and make and subscribe the declaration, as other persons qualifying for offices. s. 13.

To take the oaths.

And every deputy lieutenant, colonel, lieutenant colonel, or major, acting, not being qualified as aforesaid, or without having delivered in such specifick description of his qualification as is herein-before required, shall forfeit 200 l. and every captain 100 l. half to him that shall sue, and half to the uses herein-after directed. And the proof of the qualification shall lie on him against whom the action is brought. s. 14.

Penalty on acting not being qualified.

Provided, that nothing herein shall extend to restrain or prevent any peer of this realm, or his heir apparent, from being appointed, or acting as a deputy lieutenant or commissioned officer within the county or place wherein he shall have some place of residence; or to oblige any peer or his apparent of such peer (duly appointed) to leave his qualification with the clerk of the peace. *id.*

Exception as to peers.

Provided also, that the acceptance of a commission in the militia, shall not vacate the seat of any member returned to serve in parliament. s. 128.

Commission not to vacate a seat in parliament.

His majesty's lieutenant, together with three deputy lieutenants, and on the death or removal or in the absence

How long the officer shall continue.

of his majesty's lieutenant, any five deputy lieutenants, may, at the end of every five years, at their annual meetings, in case the militia of such county or place shall not be then embodied, discharge some one field officer of each regiment or battalion, and such a number of officers of each inferior rank, as shall be equal to the number of persons who shall have given notice in writing to his majesty's lieutenant, one month at least before such meeting, that they are willing to serve as field officers, captains, lieutenants, or ensigns, as the case may require: Provided that the number of vacancies to be made shall not exceed one third of such officers who shall have served for five years in each rank respectively: Provided also, that nothing herein shall prevent any officer serving or who has served in an inferior rank, from offering himself to serve in a higher rank, if he be qualified to serve in such higher rank. *s. 15.*

Lieutenant may
act as colonel.

It shall be lawful for his majesty's lieutenant to act as colonel or commanding officer of any regiment, battalion, or independent company, during such time as there shall not be any colonel or commanding officer appointed; but no lieutenant shall act at any one time as colonel or commanding officer to more than one body of militia, whether regiment, battalion, or independent company. And where such lieutenant shall take the command of any body of militia not being by this act deemed a regiment, he shall be entitled to the rank of colonel, except when the said company shall be formed into battalion as herein-after directed; but shall receive no greater pay than the proper commanding officer of such body would be entitled to. *s. 55.*

In the absence of
the colonel, &c.
the senior officer
to have the com-
mand.

And when any colonel or commanding officer of any regiment, battalion, or independent company, shall be absent from *Great Britain*, all the powers by this act given to such colonel or commanding officer shall be vested in, and may lawfully be exercised by the next officer in command who shall be residing within *Great Britain*, until such colonel or commanding officer shall be returned, and shall have notified his arrival to the clerk of the peace of the county or place to which such militia belongs: and such clerk of the peace shall forthwith, upon receipt of such notification, transmit an account thereof to the officer who shall have been next in command as aforesaid; and all acts done by such officer next in command, shall be as valid in law, as if they had been done by the colonel or commanding officer himself. *s. 56.*

And when a battalion is commanded by a lieutenant colonel who shall have been commandant of the same for five years, the lieutenant, with the consent of his majesty, may give such lieutenant colonel commandant, a commission of colonel. *f. 57.*

Lieutenant colonel of 5 years standing may be appointed colonel.

And when the number of men in any county, riding, or place is sufficient, the militia thereof shall be formed into a *regiment*, to consist of not more than twelve, nor less than eight companies; of 80 private men to a company at the most, and 60 at the least; and the field officers shall be one *colonel*, one *lieutenant colonel*, and one *major*: And if under eight and not less than five companies, such militia shall be formed into a *battalion*, and the field officers of such battalion shall be, one *lieutenant colonel*, and one *major* only: And if under five and not less than three companies, into a *battalion*, with one *lieutenant colonel*, or *major*, and no other field officer. And in each *regiment* or *battalion* there shall be one *captain*, one *lieutenant*, and one *ensign* to each company: but every *battalion* of five companies or upwards, may have one company of *grenadiers* or *light infantry*, to which two *lieutenants* shall be appointed, instead of one lieutenant and one *ensign*: And every *regiment* of eight companies or upwards, may have one company of *grenadiers* and one of *light infantry*, to each of which two *lieutenants* shall be appointed in like manner. *f. 53.*

Forming regiments and battalions, and appointing officers to the same.

And where the number is sufficient to form six companies, but not sufficient to form a *regiment*, the lieutenant may appoint three persons qualified as aforesaid, to serve with the rank of *colonel*, *lieutenant colonel*, and *major*, but with no higher pay than if they were appointed *lieutenant colonel*, *major*, and *captain*. And where the number is sufficient to form four, but not to form six companies, the lieutenant may appoint two persons qualified as aforesaid, to serve with the rank of *lieutenant colonel* and *major*, but that only one of them shall be entitled to any higher pay than that of a *captain*. And where the number is not sufficient to form more than two companies, the eldest *captain* shall rank as *major*, but shall only be entitled to the pay of *captain*. *f. 58.*

And when the number of men shall not be sufficient to form a *battalion*, they shall be formed into *independent companies*, each company to consist of 80 private men at the most, and 60 at the least, with one *captain*, one *lieutenant*, and one *ensign* to each company. And his majesty may join together any number of such independent companies and form a *battalion*, or may incorporate them with any other *regiment* or *battalion*, provided the number of com-

Independent companies.

panies be not thereby made to exceed the number of companies of which a regiment or battalion is herein-before directed to consist. *f. 54.*

Captain lieutenant.

And any person duly qualified as a lieutenant, may be appointed *captain lieutenant* in any regiment or battalion consisting of not less than six companies, but such captain lieutenant shall not, by the date of his commission or otherwise, rank above a captain. *f. 59.*

No adjutant, surgeon, regimental or battalion clerk, or quarter master, to be appointed a captain.

But no *adjutant, surgeon, regimental or battalion clerk, or quarter master*, shall be capable of being appointed captain of a company; nor shall any captain of a company be capable of being appointed to any of those places. Provided nevertheless, that any battalion clerk may be appointed a captain lieutenant in any regiment or battalion entitled to one by this act. *f. 62.*

Adjutant.

His majesty may appoint one proper person who shall have served, or at the time of such appointment shall actually serve, in some of his majesty's other forces, or in any corps of militia that has been drawn out and embodied, to be an *adjutant* to each regiment, battalion, or independent company; and such adjutant, if appointed out of his majesty's other forces, shall, during his service in the militia, preserve his rank in the army, in the same manner as if he had continued in that service; and his majesty's lieutenant may give to the adjutant a commission of *lieutenant* or *ensign*, although such adjutant may not have the qualification required by this act for such commission. And such lieutenant may, on the recommendation of the commanding officer of any regiment or battalion consisting of not less than six companies, appoint such adjutant to the rank of *captain* by *brevet*, provided he hath served five years as a lieutenant, either in the militia or other forces, although he may not have the qualification required by this act for captain. Provided always, that no such appointment shall be valid, unless in the instrument granting the same it be specified, in what regiment or battalion, and whether in the militia or other forces, such adjutant hath served as a lieutenant, and what was the date of his commission. But no adjutant so appointed to the rank of a captain, shall by the date of such appointment, or otherwise, rank above or command any captain, nor be entitled to any greater pay than that of a lieutenant, together with his pay as adjutant. *f. 60.*

Serjeant's, corporals, and drummers, to be appointed.

And *serjeants, corporals, and drummers*, shall be appointed in the following proportion (*when the regiment is not in actual service*), that is to say, one serjeant and one corporal to every 30 men, and one drummer to every company; with

with an addition of one drummer to each flank company of regiments or battalions consisting of six or more companies; and where there shall be a surplus of 15 men or upwards, one additional corporal for such surplus of men; and all serjeants and corporals shall take the following oath:

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George; and I do swear that I am a protestant, and that I will faithfully serve as a serjeant [or corporal] in the militia, within the kingdom of Great Britain, for the defence of the same, until I shall be legally discharged.

Oath.

And any serjeant, corporal, or drummer, may be discharged by the colonel or commanding officer, with the consent of the captain of the company: And such captain, with the approbation of the commanding officer, may appoint another proper person in the room of every serjeant, corporal, and drummer who shall die, desert, or be discharged; all which serjeants and corporals so appointed, shall take the oath aforesaid. *f. 64, 65.*

Serjeants, &c. may be discharged, and others appointed.

But no person who shall keep any house of publick entertainment, or who shall sell any ale, wine, or spirituous liquors by retail, shall be capable of being appointed, or of serving as a serjeant, corporal, or drummer. *f. 64.*

Publicans excepted.

And the colonel or commanding officer of every battalion consisting of four or more companies, may appoint a *serjeant major* out of the serjeants, and a *drum major* out of the drummers. *id.*

Serjeant and drum major.

And all serjeants, corporals, and drummers, who have received pay as such, shall be deemed to be engaged, and compellable to serve in such regiment, battalion, or independent company, until they shall be legally discharged. *id.*

Serjeants, &c. compellable to serve.

And in case the lieutenant or commanding officer shall be desirous of keeping up a greater number of drummers than one per company to be employed as *fifers* or *musicians*, and shall be willing to defray the expence of such additional drummers; it shall be lawful for the commanding officer to retain any number of drummers who are now employed as *fifers* or *musicians*, over and above the number established by this act; or at any time hereafter to engage any additional number of drummers to act as *fifers* or *musicians* in their respective corps; and they shall be deemed as drummers of militia within the meaning of this act; and shall be subject to the same orders, regulations, penalties, and punishments, as other drummers; and shall

Extra drummers may be kept as *fifers* or *musicians*.

continue to serve so long as they shall receive the same pay and cloathing as other drummers, or better, and no longer. *f.* 66.

Clerk of the regiment or battalion.

And the colonel or commanding officer of every regiment or battalion consisting of more than two companies (when not in actual service) may appoint a *regimental* or *battalion clerk*, who shall execute the office of paymaster: But where there are no more than 2 companies, no clerk shall be allowed, but the receiver general of the land tax shall pay the money necessary to the commanding officer of such companies, who shall account with the receiver general for the same. *f.* 61.

Clerk of the general meetings.

And the lieutenant of every county, riding, or place, shall appoint a *clerk of the general meetings*, and may displace such clerk if he shall think fit, and appoint another in his room. *f.* 16.

Clerks of the subdivision meetings.

And the deputy lieutenants within their respective subdivisions shall appoint a *clerk for their subdivisions*, and may displace him if they think fit, and appoint another in his room. *id.*

Agent.

When any regiment or battalion shall be drawn out into actual service, and during the time they shall continue in actual service, the colonel, or where there is no colonel the commanding officer, shall appoint an agent; and take security from such agent; and such colonel or commanding officer respectively shall be liable to make good all deficiencies on account of the pay, cloathing, or publick stock. *f.* 100.

II. Number of men to be raised in the several counties.

Number of private men.

By *f.* 17. The number of private men to be raised (exclusive of the places herein after excepted) shall be as follows.

For the county of Bedford	_____	_____	400
Berks	_____	_____	560
Bucks	_____	_____	560
Cambridge	_____	_____	480
Chester, with the city and county of the city of			
Chester	_____	_____	560
Cornwall	_____	_____	640
Cumberland	_____	_____	320
Derby	_____	_____	560
Devon, with the city and county of the city of			
Exeter	_____	_____	1600
			Dorset,

Dorset, with the island of Purbeck, and the town and county of the town of Poole	640
Durham	400
Essex	960
Gloucester, with the city and county of the city of Bristol	960
Hereford	480
Hertford	560
Huntingdon	320
Kent, with the city and county of the city of Canterbury	960
Lancaster	800
Leicester	560
Lincoln, with the city and county of the city of Lincoln	1200
Middlesex (exclusive of the Tower hamlets)	1600
Monmouth	240
Norfolk, with the city and county of the city of Norwich	960
Northampton	640
Northumberland, with the town and county of the town of Newcastle, and town of Berwick	560
Nottingham, with the town and county of the town of Nottingham	480
Oxford	560
Rutland	120
Salop	640
Somerset	840
Southampton, with the town and county of the town of Southampton	960
Stafford, with the city and county of the city of Litchfield	560
Suffolk	960
Surrey	800
Sussex	800
Warwick, with the city and county of the city of Coventry	640
Westmorland	240
Worcester, with the city and county of the city of Worcester	560
Wilts	800
York, West Riding, with the city and county of the city of York	1240
— North Riding	720
— East Riding, with the town and county of the town of Kingston	400
Anglesea	80
Brecknock	

Brecknock	_____	_____	—	160
Cardigan.	_____	_____	—	120
Caermarthen	_____	_____	—	200
Caernarvon	_____	_____	—	80
Denbigh	_____	_____	—	280
Flint	_____	_____	—	120
Glamorgan	_____	_____	—	360
Merioneth	_____	_____	—	80
Montgomery	_____	_____	—	240
Pembroke	_____	_____	—	160
Radnor	_____	_____	—	120

Total 30,740

Proportioned in
the several
counties.

His majesty's lieutenant shall transmit to the privy council annually, an account in writing of the *true* state of the number of persons fit and liable to serve in the militia for the county or place of which he is lieutenant; and after all the said numbers shall be so transmitted to the privy council, the said council shall fix and settle, as near as may be, the number of militia men, who shall for the future serve for each county, riding, or place, by the proportion which the numbers so returned bear to the whole number of militia men directed to be raised, and forthwith transmit accounts of the numbers so fixed and settled to all his majesty's lieutenants of the several counties and places respectively. *s. 50.*

And where the number of militia men so fixed and settled as aforesaid, shall be greater than the number of militia men, who shall be by virtue of this act appointed to serve for any county, riding, or place; in such case, his majesty's lieutenant, together with two deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, three deputy lieutenants, shall at a general meeting to be held for that purpose, appoint what number of militia men shall serve for each respective hundred, rape, lathe, wapentake, or other division, within the county, riding, or place, to which they belong; and the additional number of militia men to make up the whole number so fixed and settled as aforesaid, shall be provided or chosen, and sworn and inrolled, in like manner as all other militia men. And where the number of militia men so fixed and settled as aforesaid, shall be less than the number of militia men, who shall be by virtue of this act appointed to serve for any county, riding, or place; in such case, his majesty's lieutenant, together with two deputy lieutenants, and on the death or removal, or in the absence of his majesty's lieutenant, three deputy lieutenants, shall

at a general meeting to be held for that purpose, discharge by lot proportionably out of each respective hundred, rape, lathe, wapentake, or other division, so many militia men as shall exceed the number so fixed and settled as aforesaid. *id.*

III. Issuing precepts to return lists.

General meetings of the lieutenantancy of every county, riding, and place, shall be holden in some principal town; to consist of the lieutenant, together with two deputy lieutenants, or, on the death or removal, or in the absence of the lieutenant, then of three deputy lieutenants; and one such general meeting shall be holden annually, on the last Tuesday which shall happen before the 24th day of October, in every year: and such lieutenant together with two deputy lieutenants, or on the death, removal, or absence of the lieutenant, three deputy lieutenants, may summon other general meetings on any days to be fixed by such summons, of which days and places respectively notice shall be given in the *London Gazette*, and also in any weekly newspaper usually circulated in such county, riding, or place, 14 days before the days appointed for holding such meetings respectively. And in case any annual or other general meeting shall not be attended by the lieutenant, or a sufficient number of deputy lieutenants, the lieutenant, or any one deputy lieutenant, may adjourn the same to any other time and place, within such county, riding, or place; and in case no deputy lieutenant shall attend, then the clerk of the general meetings shall adjourn such meeting to any other time, to be holden at the same place. *f. 18.*

A general meeting to be had.

At which annual general meeting they shall appoint the first meetings of the deputy lieutenants within the several subdivisions, which shall be held as early after the 24th day of October in every year as conveniently may be. *f. 22.*

Subdivision meetings to be appointed.

And the respective clerks of the subdivision meetings, shall as soon as conveniently may be after any such meeting shall have been appointed, give notice in writing of the time and place of meeting, to such of the deputy lieutenants who shall be resident within such subdivision, as he conveniently can; and also to the commanding officer of the regiment or battalion if on actual service, or (if not) to the colonel thereof, or (in his absence from Great Britain) to the next commanding officer; and an account of the several days fixed for receiving lists, and for balloting and enrolling the men. *f. 20.*

Notice to be given of subdivision meetings.

Which

Of what number to consist.

Which *subdivision meetings* shall consist of two deputy lieutenants at the least, and where two deputy lieutenants do not attend, one deputy lieutenant, and one justice, may do all acts, matters, and things, which are by this act directed to be done by deputy lieutenants, at their subdivision meetings. *f. 19.*

Sufficient number not appearing.

And if there shall not appear at any *subdivision meeting*, two deputy lieutenants, or one deputy lieutenant, and one justice; the clerk shall, by notice to be given in writing to all the deputy lieutenants within such subdivision, or left at their respective places of abode, appoint another meeting to be held within 14 days, at the same place, such notice to be given at least 5 days previous to such meeting. *f. 21.*

Precepts to be issued for returning lists.

At the said first general meeting, they shall issue (A) their orders to the chief constable, and where there is no chief constable, to some other officer of the several hundreds, rapes, lathes, wapentakes, or other divisions, to require by orders under their hands the constable or other such officer, of each parish, tithing, or place, to return to the deputy lieutenants within the subdivisions, at the place, and on the day, appointed at the said first general meeting, fair and true lists in writing, of the names of all the men usually and at that time dwelling within their respective parishes, tithings, and places, between the ages of 18 and 45 years, distinguishing their respective ranks and occupations; and where the true names of such persons cannot be procured, their common appellation shall be sufficient, and which of the persons so returned labour under any infirmity, likely to incapacitate them from serving; having first affixed a true copy of such list on the door of the church or chapel, and if any place have no church or chapel, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday morning, before they shall make such return, which Sunday shall be three days at the least before the said meeting; and also notice in writing, at the bottom of such list, of the day and place of such meeting, and that all persons who shall think themselves aggrieved, may then appeal, and that no appeal will be afterwards received. *f. 22.*

Parishes lying in two counties.

And where any parish shall lie in two or more counties or ridings, the inhabitants thereof shall serve in such county or riding wherein the church belonging thereto is situate, which shall for the purposes of this act be deemed part of that county or riding. *f. 33.*

Persons refusing to tell their names.

And if any person shall refuse to tell, or shall falsely tell his christian and surname, or the christian and surname of any

any man lodging or residing within his house, to any constable or other officer authorised by this act to demand the same, he shall forfeit 10 l. *f. 31.*

Provided, that no peer of this realm, nor any person who shall serve as a commissioned officer in his majesty's other forces, or in any of his castles or forts; nor any non-commissioned officer, or private man serving in any of his majesty's other forces; nor any commission officer serving, or who has served, four years in the militia; nor any person being a member of either of the universities; nor any clergyman; nor any *licensed teacher of any separate congregation*; nor any constable, or other peace officer; nor any *articled clerk*, apprentice, seaman or seafaring man; nor any person mustered, trained, and doing duty in any of his majesty's dock yards; nor any person free of the company of watermen of the river *Thames*; nor any person employed and mustered at the *Tower of London*, *Woolwich warren*, the several gun-wharfs at *Portsmouth*, *Chatham*, *Sheerness*, and *Plymouth*, or at the powder mills, magazines, or store-houses under the direction of the board of ordnance; nor any poor man who has more than one child born in wedlock; shall be compelled to serve personally, or to provide a substitute. *f. 27.*

Persons exempted.

Licensed teachers of any separate congregation] By the 19 G. 3. c. 44. Every person dissenting from the church of *England*, in holy orders, or pretended holy orders, or pretending to holy orders, being a teacher or preacher of any congregation of dissenting protestants, who shall, at the general sessions of the place where he lives, take the oaths of allegiance, supremacy, and abjuration, and subscribe the declaration against popery of the 30 C. 2. and a declaration that he is a christian, and a protestant, and believes the doctrine of the Old and New Testament, shall be exempted from serving in the militia of this kingdom.— And the clerk of the peace's certificate thereof seems to be that which denominates him a *licensed teacher*.

Articled clerk] H. 17 G. 3. In the common pleas: *Gerard's case*. A writ of privilege was moved for, to exempt Mr. *Gerard* an attorney and one of the secondaries of the court, from serving as a militia man in the West regiment of the *Middlesex* militia, into which he had been balloted. And the court granted a rule to shew cause, to be served on the clerk to the deputy lieutenants. On shewing cause, it was urged in support of the rule, that articled clerks being exempted by name, much more ought the attornies themselves to be exempted; for to what purpose

pose are the clerks exempted, if their master is liable to be taken from them? And certain cases were mentioned relating to the militia upon the old establishment, particularly with respect to the *London* trained bands, where the said privilege was allowed. Against the rule, it was contended, that the privilege of the court extends only to exempt its officers from *personal* duties; that this is not a *personal* duty, but a *pecuniary* one, for if the party doth not chuse to serve, he may pay 10*l*.—And by the court, after great deliberation, the true distinction is, whether this is a *personal* or *pecuniary* duty. It is beyond a doubt, that privilege extends to all cases of personal service, tho' imposed by acts of parliament and in the most comprehensive words, unless clearly expressing the sense of the legislature to the contrary: As in the cases of constables and tythingmen, officers under commissioners of sewers, overseers of the poor, collectors of subsidies, watch and ward. The only question therefore is, whether this be a *personal* service. And we are all of opinion, that it is not a *personal*, but only a *pecuniary* service, because it may, at the option of the party balloted, be commuted for a certain sum of money, namely 10*l*.; which sum is to be laid out in providing a substitute for the defaulter, who by payment of the said money stands totally discharged for three years. He has therefore three options allowed him, to serve personally, to find a substitute, or to pay 10*l*. This is the whole of his charge; for altho' in times of distress and necessity the current price of a substitute should be 50*l*. the person balloted may be excused for 10*l*. It is therefore not a penalty for the neglect of finding a substitute, for it may be less than the expence of hiring one; but it is clearly a commutation. And this distinguishes the case most materially from that of the *London* trained bands, and the ancient commissions of array; where, if the party did not, or was not permitted, to find a deputy, he was obliged to serve in person under an unlimited penalty, sometimes of imprisonment, sometimes of the forfeiture of all that he had. And the court were unanimous, that in this case the privilege should not be allowed. *Black. Rep.* 1123.

Fraudulent apprenticeship.

And if the deputy lieutenants and justices at any subdivision meeting, shall receive information, or suspect, that any person inserted in any list, described as an apprentice, has been fraudulently bound in order to avoid serving; they may inquire into such binding, and summon witnesses, and examine them on oath: And if such fraud shall appear, they may appoint such person so bound apprentice, to serve immediately in the militia of the place
for

for which such list was returned, if there be a vacancy; if not, then on the first vacancy that shall happen: And the person to whom such apprentice shall be so bound, shall forfeit 10 l. *f. 34.*

If any chief constable, constable, or other officer, shall refuse or neglect to return such list, or to comply with such orders as he shall receive from the deputy lieutenants, in pursuance of this act; or shall in making such return be guilty of any fraud or wilful partiality, or gross neglect, any two deputy lieutenants may imprison him in the common goal for one month, or at their discretion may fine him in any sum not exceeding 5 l. nor under 40 s. *f. 30.*

Constables neglecting their duty.

And any person who shall by gratuity, gift, or reward, or by promise thereof, or of any indemnification, or by menaces, or otherwise endeavour to prevail on any constable or other officer to make a false return, or to erase or leave out the name of any person who ought to be returned; he shall forfeit 50 l. *f. 31.*

Endeavouring to procure false returns.

If the list of any parish or place shall be lost or destroyed; the deputy lieutenants, in their subdivisions, may cause a new list to be made and returned to them at their next subdivision meeting, in like manner as the former was. *f. 29.*

List lost.

At the said first meeting, may be appointed also, the time and place of a second general meeting, for proportioning the numbers in the several hundreds or other large divisions, if judged needful. *f. 22.*

Second general meeting appointed.

IV. Returning and settling of the lists.

On the day and at the place appointed for the first subdivision meeting as aforesaid, for the return of the lists, the constables or other officers respectively shall attend, and verify their return upon oath. *f. 22.*

List to be returned upon oath.

And the deputy lieutenants, so assembled in their subdivisions, shall (after hearing any person who shall think himself aggrieved, by having his name inserted, or by any others being omitted) direct such lists to be amended as the case shall require; and also the names of all persons by this act excepted, to be struck out of the said lists. *id.*

Appeals to be heard, and lists amended.

A person having more than one place of residence, shall serve, for the county or place, where his name shall have been first inserted in a list, and returned; and the clerk to the subdivision meeting to which such list shall be returned, shall on request grant a certificate *gratis*, that such person's name was inserted in such list, specifying the time when such list was made and returned. *f. 22.*

Case where a person hath two places or abode.

Time appointed
for a second sub-
division meeting.

And at the said first subdivision meeting they shall appoint a time and place for the second meeting within each subdivision; for proportioning the numbers in the several parishes, tithings, and places. *f. 22.*

Return to the
clerk of the
general meet-
ings.

And shall also return to the clerk of the general meetings, certificates under their hands, of the number of men in each parish or place specified in the lists so amended; and the same shall be filed by the clerk for the use of the general meetings. *id.*

*V. Proportioning the numbers in the hundreds, &c.
or altering the subdivisions.*

And the lieutenant, together with three deputy lieutenants, or on the death or removal, or in the absence of the lieutenant, five deputy lieutenants may, at a general meeting holden as before directed, alter the appointed subdivisions within such county, riding, or place, if they shall see occasion; and may alter the established allotment of the number of men in each respective hundred, rape, lath, wapentake, or other division, according to the numbers contained in such respective certificates, received from the several subdivision meetings. *f. 23.*

*VI. Proportioning in the several parishes, tithings, or
places.*

Proportioning in
the several pa-
rishes or places.

At the second subdivision meeting as aforesaid, the deputy lieutenants shall appoint what number of men shall serve for each parish, tithing, and place; in proportion to the number appointed to serve for each hundred, rape, lath, wapentake, or other division; and shall appoint another meeting to be holden within three weeks within the same subdivision. *f. 24.*

Two or more
parishes or places
may be joined.

And they may add together, whensoever they shall think necessary, the lists for two or more parishes, tithings, or places; and proceed upon such lists added together, so as to make the choice of militia men by lot as equal and impartial as possible. *f. 28.*

Notice to be
given for ballot-
ing.

And they shall issue out an order (B) to the chief constable or other officer of the respective hundreds or other divisions, requiring them to give notice to the constable or other like officer of each parish, tithing, or place, of the men appointed to serve for such respective parish, tithing, or place; and of the time and place of the next subdivision meeting, for chusing the men by lot. *f. 24.*

VII. Bal-

VII. Balloting.

And the deputy lieutenants, at their next subdivision meeting, shall cause the number of men appointed to serve as aforesaid, to be chosen by ballot out of the lists returned from every parish, tithing, or place. *f. 24.*

Balloting.

And if through the neglect or mistake of any chief constable, constable, or other officer; or from any other cause, the full number of men appointed as aforesaid, should not be duly inrolled at the meeting for that purpose; the said deputy lieutenants shall, and are required immediately, to cause the lists to be amended, and to proceed to a fresh ballot, and to adjourn their meeting, or appoint other meetings, and repeat the amending of the lists as may be necessary. *f. 25.*

Vacancy by mistake or neglect.

And if it shall appear to the deputy lieutenants at any subdivision meeting, that any balloted man is unable by reason of any infirmity, or is not of the full height of five feet four inches, or is otherwise unfit for the service; and is not seised or possessed of an estate in lands, goods, or money, of the clear value of 100 l. and who shall make oath thereof; such person shall be discharged, and after amending the lists, another person shall be balloted in his stead. *f. 37.*

Vacancy by the person balloted being infirm, or short of size.

And when any militia man who hath been sworn and inrolled, shall become unfit for service, the colonel or commanding officer, with two deputy lieutenants, if the militia shall then be within the county, or the commanding officer only if such militia be absent therefrom, may discharge any such militia man, but another man shall not be balloted for in his room, until such discharge be confirmed under the hands of two deputy lieutenants at a meeting in the subdivision for which such man was inrolled. *f. 38.*

Vacancy by discharge.

And when any militia man shall die, or be appointed a serjeant, corporal, or drummer in the militia, or shall be discharged by a court martial, the vacancy thus occasioned shall be filled up by a fresh ballot. *f. 39.*

Vacancy by death or promotion.

And if any militia man shall desert or absent himself from his duty, and shall not return or be taken in three months; then upon certificate thereof from the commanding officer, to the deputy lieutenants at any of their meetings for the subdivision, they shall hold a subdivision meeting and ballot another: And if such absentee shall at any time return or be taken, he shall, notwithstanding any person shall have been chosen in his room, be compelled

Vacancy by a deserter not returning, nor being taken in three months.

Substitutes
deserting.

to serve in the same manner, and for the same term, as if no person had been so chosen in his room. *f. 83.*

And if any *substitute* who hath been sworn and inrolled, shall afterwards desert or absent himself, he shall be liable to serve for the full term for which he was inrolled, to be computed from the day on which he was apprehended: and shall be also subject to such other penalty or punishment, as shall be inflicted upon him for such offence by virtue of this act: And the commanding officer shall cause notice to be given to the clerk of the subdivision for which such person was inrolled, of the day on which he was apprehended, and such clerk shall make an entry in the roll of the name of such person, and also of the time of his being so apprehended. *f. 84.*

Men to be balloted for in the room of those whose terms of service will expire before 20th November ensuing.

And the deputy lieutenants, at their several subdivision meetings, shall and are required to ballot for all militia men actually serving, whose terms of service will expire before the 20th day of *November* then next ensuing the holding of such meetings, and shall at a following meeting, to be holden as soon as conveniently may be, inroll the said balloted men or their substitutes: And the commanding officer may from time to time discharge any man whose time of service will expire before the 20th day of *November* then next ensuing, and receive any other man in his room who hath been sworn and inrolled; and such person so discharged, if serving for himself, or if as a substitute, then the person for whom he served shall be entitled to the same immunity from further service, as if he had served his full term. *f. 40.*

Parishes may offer volunteers without balloting.

Provided, that if the churchwardens or overseers of any parish, tithing, or place, shall, with the consent of the inhabitants taken at a vestry, or at any other meeting to be holden for that purpose, of which three days previous notice shall be given, specifying the cause of calling such meeting, provide and produce any volunteer or volunteers, who shall be approved by the said deputy lieutenants, they shall then and there be sworn in and inrolled; and only so many shall be chosen by lot, as shall be wanted to make up the whole number to serve for such parish, tithing, or place. *f. 42.*

And if such churchwardens or overseers shall give to such volunteers any sum or sums of money to serve in the militia, not exceeding 6*l.* each: they may make a rate on the inhabitants according to the rate then made for the relief of the poor; which rate being approved by one justice, the said churchwardens or overseers may collect, and reimburse themselves such sums as they shall have paid

paid with the consent of the said inhabitants as aforesaid; and the overplus (if any) shall be applied as part of the poor rate. And if any shall refuse to pay; one justice, on complaint thereof by such churchwarden or overseer, may levy the same by distress.—But no balloted person, who shall have served himself, or by substitute, according to the direction of this or any former act, or who shall be then serving himself or by substitute, shall be liable to pay to any such rate. *id.*

Provided always, that any person who shall think himself aggrieved by such rate as aforesaid, may appeal to the next sessions, in like manner as against the poor rate. *id.*

And the said deputy lieutenants and justices shall, at their said subdivision meeting for balloting, appoint another meeting to be held within three weeks in the same subdivision, for swearing and inrolling the men. *s. 24.*

And shall issue out an order (C) to the chief constables, to direct the constables or other officers of each parish or place, to give notice to every man so chosen to appear at such meeting; which notice shall be given, or left at his place of abode, at least seven days before such meeting. *id.*

Meeting appointed for swearing and inrolling.

Notice to be given to the persons balloted.

VIII. Swearing and inrolling; and therein, of substitutes.

At which said meeting for swearing and inrolling, the constables shall attend, and make a return upon oath of the days when such notice was served. *s. 24.*

Proof to be made of notice to the person balloted.

And every person so chosen by lot, shall upon such notice appear at such meeting, and there take the following oath:

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George; and I do swear, that I am a protestant, and that I will faithfully serve in the militia, within the kingdom of Great Britain, for the defence of the same, during the time of five years for which I am inrolled, unless I shall be sooner discharged.

Oath.

And every such person shall be inrolled (in a roll to be then and there prepared for that purpose) to serve in the militia, as a private militia man for the space of five years. *id.*

To be inrolled.

Provided always, that if any person so chosen by lot, shall produce for his substitute, a man of the same county or riding, or of some adjoining county or riding, able and

Substitutes to be accepted.

fit for service, who shall have not more than *one* child born in wedlock, and who shall be approved by the said deputy lieutenants, such substitute shall be inrolled to serve in the militia of such county, riding, or place, as a private militia man, for the space of five years; and also for such further time as the militia shall remain embodied, if within the space of five years, his majesty shall order such militia to be drawn out and embodied; and such substitute shall take the following oath:

Oath.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George; and I do swear, that I am a protestant, and that I will faithfully serve in the militia, within the kingdom of Great Britain, for the defence of the same, during the time of five years, or for such further time as the militia shall remain embodied, if, within the space of five years, his majesty shall order and direct the militia to be drawn out and embodied, unless I shall be sooner discharged. id.

One deputy lieutenant may administer the oath.

And one deputy lieutenant may administer the oath herein before required to be taken by any such balloted man, volunteer, or substitute, qualified as aforesaid, and such deputy lieutenant shall require the clerk of the subdivision, to inroll the name of every such person, together with the date of the day on which the said oath was administered, in the roll of such subdivision. *f. 25.*

Penalty of a balloted man not appearing to be sworn.

And if any person chosen by lot (not being one of the persons called quakers) shall refuse or neglect to appear to take the said oath, and serve in the militia, or to provide a substitute to be approved as aforesaid, who shall take the said oath, and sign his consent to serve as his substitute; every such person so refusing or neglecting, shall forfeit 10 l. (10) and at the expiration of five years be liable to serve again, or provide a substitute; and in default of payment thereof, and for want of sufficient effects whereon to levy the same, the name of such person shall be entered on the roll, and he shall be delivered over to some proper officer of the regiment, battalion, or independent company for which he was balloted, and shall be compelled to serve for such term, to be computed from the time of his being apprehended, as any other balloted person would be compellable to serve, and shall be subject to the same punishments for afterwards absconding or deserting, as he would have been in case he had appeared and been duly sworn and inrolled. *f. 26.*

Application of the penalty.

And such penalty shall be applied, by the said deputy lieutenants, in providing a substitute for the person who paid

paid the same, (who shall be sworn and inrolled in like manner as other substitutes;) and if any surplus shall remain, the same shall be paid to the colonel or commanding officer, to be applied as part of the regimental stock. *f. 51.*

And if any person shall receive any money to serve as a substitute or volunteer, and shall neglect to appear at the usual meeting appointed for swearing the militia men, or before some one deputy lieutenant, as aforesaid; he shall, on conviction before one deputy lieutenant or justice, be obliged to return the money to the person from whom he received it; and shall also forfeit and pay to such person any sum not exceeding 20 s. at the discretion of such deputy lieutenant or justice; and if such offender shall not immediately return the money, and likewise pay the said penalty, he shall be committed to the common gaol or house of correction for 14 days, or until the said sum shall be returned. *f. 44.*

Substitutes not appearing to be sworn.

And when any balloted man shall have engaged any person to serve as his substitute, or any churchwardens or overseers shall have engaged any person to serve as a volunteer as aforesaid, and after such person hath been inrolled, shall refuse to pay the sum agreed on; it shall be lawful for any justice, and he is required to order such sum as shall appear to him to be due, to be paid to the person so engaged; and such justice shall proceed therein in the same manner as directed by 20 G. 3. c. 19. for the recovery of servants wages. *f. 45.*

Justices may order payment of bounty to substitutes.

And every person chosen by lot shall be liable to serve, although he may have removed from the place where his name was inserted in the list, provided he was residing in such place at the time the list was prepared. *f. 32.*

Balloted man changing his place of abode.

If any quaker shall be balloted, and shall refuse or neglect to appear and take the oath and serve in the militia, or to provide a substitute to be approved as aforesaid, two deputy lieutenants shall if they think proper, upon as reasonable terms as may be, provide and hire a fit person to serve as his substitute, who shall take the said oath, and be inrolled in like manner as other substitutes; and two deputy lieutenants may levy (E) by distress and sale of the goods and chattels of such quaker, such sum as shall be necessary to defray the expence of providing such substitute, rendering to such quaker the overplus (if any) after deducting the charges of such distress and sale: And if sufficient distress cannot be found, and it shall nevertheless appear satisfactorily to such deputy lieutenants, that such quaker is of sufficient ability to pay the sum of 10 l. they may commit (F)

Quakers being balloted.

him to the common gaol for three months, or until he has paid such sum of money as such deputy lieutenants shall have agreed to pay for such substitute. *f. 35.*

And if any measures shall be used in making such distress, which may by such quaker be thought oppressive, he may complain to the deputy lieutenants at their next meeting, who shall hear and finally determine the same. *id.*

Quakers refusing
to pay the rate
made for volun-
teers.

And where any rate shall have been made for providing of volunteers, and the churchwardens or overseers shall make complaint to a justice, that any quaker refuses to pay his rate, such justice shall order such costs and charges to be paid for levying such distress as he shall think reasonable, not exceeding 10 s. on each of the said quakers where there are no more than two, and where there are a greater number, not exceeding 5 s. on each. *f. 36.*

Who shall be
deemed quakers.

But no person shall be deemed a quaker within the meaning of this act, unless he shall produce at some subdivision meeting, a certificate under the hands of two reputable housekeepers of the people called quakers, acknowledging such man to be one of their persuasion. *id.*

Balloted man
discharged from
serving again.

No person having served *personally* or by *substitute* according to the direction of this, or any former act, shall be obliged to serve again, until by rotation it comes to his turn. *f. 27.*

Substitute not
discharged.

But no person who served *only as a substitute* shall by such service be exempted from serving again, if he shall be balloted. *id.*

Servant's to be
paid their wages.

And if any servant whatever, hired by the year, or otherwise, shall be inrolled as a militia man, and any dispute shall arise between him and his employer, touching any money due to him for service performed before the time of such swearing and inrollment, or of his being obliged to quit his service by being called out to join the militia in which he shall have been sworn and inrolled; one justice of the county or place where such employer shall inhabit, on complaint made within *three months* from the time of quitting the said service, may hear and determine the same, and order payment of so much wages in proportion to the service performed, as he shall think reasonable: Provided the sum in question does not exceed *twenty pounds*; and in case of non payment for 21 days, may levy the same by distress. *f. 43.*

Copies of the
rolls to be trans-
mitted.

Note, After every subdivision meeting, the clerk of the said meeting shall, within 14 days after each meeting, transmit to the clerk of the general meetings, fair and true pies of the rolls signed at the said meetings. *f. 49.*

And

And such subdivision clerk shall also, as soon as the militia men are inrolled, likewise transmit to the colonel or commanding officer, a list specifying the names, trades, and usual places of abode, of all such militia men as are inrolled, and if substitutes, the names, trades, and places of abode, of the persons in whose room they were inrolled. *f. 20.*

IX. Inlisting and beating up for volunteers.

If any officer, serjeant, or other person, shall wilfully and knowingly inlist any man to serve in his majesty's other forces, who at the time of such inlisting shall be inrolled or engaged to serve in the militia; every such inlisting shall be deemed null and void. And if any militia man, at the time of offering to inlist, shall deny to such person recruiting for men, that he is a militia man then actually inrolled and engaged to serve (which such officer, serjeant, or other person is required to ask every man offering to inlist); or shall offer himself to be inrolled and serve in any other regiment, battalion, or independent company of militia; every militia man so offending, shall, on conviction, upon the oath of one witness, before one justice, be committed to the common gaol or house of correction, for any time not exceeding six months, over and above any penalty or punishment to which he shall be otherwise liable; and from the day on which his engagement to serve in the militia shall end, and not sooner, shall belong as a soldier to the corps in which he shall have been so inlisted. *f. 47.*

Inlisting into the regulars.

Or offering to serve in the militia elsewhere.

And if any officer, serjeant, or other person, shall inlist any man, knowing him to belong to the militia, or without asking him if he does, he shall forfeit for every such offence 20*l.* *id.*

Persons knowingly inlisting a militia man forfeit 20*l.*

And if any person serving in the regular forces, shall offer himself to serve and be inrolled as a substitute in the militia, he shall forfeit and pay 10*l.* to the informer; or be committed to the common gaol or house of correction, for any time not exceeding three months. *id.*

Soldier in the regulars, offering to serve in the militia.

And if any person shall give orders to any serjeant, drummer, or other person serving in the militia, to beat up in any city, town, or place, for volunteers to serve in the militia, the person who shall give such orders shall, on proof thereof upon oath before one justice, forfeit 20*l.*; one moiety whereof shall go to the informer. And if such serjeant, drummer, or other person, shall refuse to declare upon oath, before such justice, from whom he received such orders,

Giving orders to beat up for volunteers.

dets, such justice may commit him to the house of correction for any time not exceeding three months. *f.* 48.

X. Training and Exercise.

At what time and place.

The militia shall be trained and exercised in manner following: that is to say, by regiment, battalion, or independent company, once in every year for 28 days together, at such time and place as shall be least inconvenient to the publick, to be appointed by a general meeting of the lieutenancy to be holden as before directed, or in default of such meeting being holden, then by the lieutenant, or by three deputy lieutenants authorized by his majesty to act when the lieutenant shall be out of *Great Britain* as aforesaid. And during such time as the militia shall be assembled to be trained and exercised, all the provisions in any act which shall be then in force for punishing mutiny and desertion, and the better payment of the army and their quarters, shall be in force with respect to the officers and private men of such militia in all cases whatsoever, but not to extend to life or limb. *f.* 68.

Notice of the time and place.

And notice of the time and place of exercise shall be sent by the clerk of the general meetings to the chief constables, with directions to forward the same to the constables or other officers of the several parishes or places; who shall cause such notice to be fixed on the doors of their churches or chapels respectively; or if any place shall have no church or chapel belonging to it, on the door of the church or chapel of some parish or place thereto adjoining. And all such militia men shall duly attend at the time and place of exercise according to such notice. *f.* 69.

Lists of the men to be sent to the commanding officers.

And the clerks of the several subdivision meetings shall, ten days at least before the time so appointed for the annual exercise, cause a full and true list, specifying the name and date of the inrollment of all the men inrolled within each subdivision, to be transmitted to the commanding officer, or person appointed by him to receive the same; and shall cause a duplicate of such list to be transmitted in like manner to the adjutant. *f.* 70.

Two thirds of the men to be balloted.

And at the first meeting for annual exercise after the passing of this act, the commanding officer shall, on the first day on which such regiment, battalion, or independent company is directed to assemble, and in the presence of such deputy lieutenants and officers as shall be then and there assembled, cause such number of persons inrolled to be chosen by ballot out of the list returned for each subdivision, as shall be equal to two-thirds of the complete

number

number that ought to have been inrolled on the list of such subdivision: But where the number of men cannot be divided into three equal parts, the two-thirds to be so chosen, shall be computed upon the next highest number that can be divided into three equal parts. *f. 71.*

And on the day next after such ballot, the commanding officer shall cause the regiment, battalion, or independent company to be mustered, according to the subdivision for which each person shall have been inrolled to serve, and shall cause the roll of each respective subdivision to be publicly called, and as the name of each person shall be read over, he shall declare whether such person is, or is not balloted. *f. 72.*

The day after the ballot the men are to be mustered.

And if any vacancy shall happen by the death or discharge of any person so balloted, or by the expiration of the term of his service, the commanding officer shall, at the next meeting for annual exercise, ballot in the manner before directed, for such further number as shall be wanting to complete the full proportion of two-thirds of the number of which such regiment, &c. ought to consist. *f. 73.*

And the vacancies to be filled up.

And the men so balloted shall be trained and exercised for the time and in the manner before directed, during every year for which they are inrolled, and the remainder shall be discharged from further attendance during the remainder of the term appointed for annual exercise. *f. 74.*

Men balloted to be exercised, and the remainder discharged.

But the men so discharged shall, during the time they remain in the town or place where such regiment, &c. is assembled, be subject and liable to the same orders, regulations, penalties and punishments, as those so chosen to be trained and exercised; unless they shall be usually resident, or have their place of abode in such town or place. *f. 75.*

Those discharged to be subject to military law while they remain.

Provided always, that such persons so discharged shall, and are required personally to appear at any subsequent time or place of exercise, of which like notice shall be given as aforesaid, and on default of such appearance, shall be subject to the same penalties and punishments as any other persons inrolled to serve are subject to. *f. 76.*

Men discharged, to appear at any subsequent exercise.

Provided also, that if any inrolled person who shall not be balloted, shall offer himself as a volunteer to be trained and exercised, in the room of any who shall be balloted, the commanding officer may accept such volunteer in the room of such balloted person, who shall be trained and exercised in the same manner, and under the same regulations, and for the same term as if he had himself been balloted. *f. 77.*

Persons not balloted may serve for such as are.

And

Not appearing
at, or deserting
during the an-
nual exercise.

And every militia man (not labouring under any infirmity incapacitating him) who shall not appear at the time and place appointed for annual exercise, notice having been published as aforesaid, shall be deemed a deserter; or having joined the corps, shall desert or absent himself, and shall not be apprehended during the time of such exercise; shall in either case forfeit and pay 20 l. which if not immediately paid, one justice, before whom he shall be convicted, shall commit him to gaol for six months, or until he shall have paid the said penalty. *s. 82.*

Manner of pro-
ceeding to appre-
hend such of-
fenders.

And if the commanding officer, or adjutant, or officer commanding the company to which such offender belongs, shall receive information of the place where he shall be or reside, he may, by writing under his hand, describe such offender, and also certify that he did not join the regiment at the time of annual exercise, or deserted during such exercise [as the case may be], and send the same by a serjeant, corporal, or drummer, to the adjutant or serjeant major of the militia of the county or place wherein such offender is supposed to be; and the adjutant or serjeant major, to whom such certificate shall be sent, shall direct a party of the serjeants, corporals, or drummers of the regiment to which he belongs, to assist in apprehending such offender, and in conveying him before some justice of the county or place where he is apprehended; and if, on confession, or oath of one witness, or the knowledge of such justice, he shall be found guilty of such offence, such adjutant or serjeant major shall order a like party, to convey him to the head quarters of the corps of militia of the next county or place, in the way to where he belongs, and shall deliver him to the adjutant or serjeant major thereof, who shall cause him to be conveyed on in like manner to the next county or place, until such offender shall be delivered into the custody of the adjutant of the corps to which he belongs; who shall take him before a justice to be dealt with as aforesaid. And from the time of his being so apprehended, until he is brought before such justice, he shall be subsisted at the rate of 6 d. per day, from the stock of the county or place to which he belongs; for which such justice shall make an order upon the treasurer of such county or place. *s. 92.*

Billeting.

It shall be lawful for the mayors, bailiffs, constables, and other chief magistrates and officers of cities, towns, parishes, tithings, and other places, and, in their default, or absence, for a justice of the peace inhabiting in or near such place, but for no others; and they are hereby required to quarter and billet the officers and private men, at the

times

times when they shall be called out to annual exercise, in inns, livery stables, alehouses, victualling houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail; on application to them made by the lieutenant, or by the colonel or commanding officer. And when the militia is not embodied, the mayors and other chief magistrates and officers as aforesaid, or, in their default or absence, one justice as aforesaid, may, and are and is required to order and provide convenient lodging in such houses as aforesaid, for the serjeants, corporals, and drummers. *§. 78.*

Serjeants, &c. to be billeted when the militia are not embodied.

And during the annual exercise, the captain or commanding officer of every company may put the men of his company under stoppages not exceeding 6 d. a day, for providing them with linen, stockings and other necessaries, and for repairing any arms which shall have been broken or damaged by such person's neglect; but shall account with each man for such stoppages; and after having deducted what has been laid out, shall pay him the remainder (if any) before he be dismissed from such exercise. *§. 87.*

Stoppages of pay, during the time of exercise.

And if any militia man shall on his march, or at the place of annual exercise, be disabled by sickness, or otherwise, one justice, or the mayor or chief magistrate of any city or place, where such man shall then be, by warrant under his hand and seal, may order such relief as he shall think reasonable, to be given to him by the officers of such parish or place; which officers shall, upon producing an account of such expences to the treasurer of the county or place for which such man shall serve (such account being first allowed under the hand of one justice) be reimbursed such expences; and such treasurer shall be allowed the same in his accounts. *§. 79.*

Men falling sick.

And when the militia shall be called out to be trained and exercised, any justice of any county, riding, or place, being thereunto required by an order from the lieutenant, or a deputy lieutenant, or from the colonel or other chief commissioned officer, of any corps or detachment of militia, being within such county, riding, or place, to issue his warrant to the chief constables, petty constables, or other officers, of the hundreds, parishes, tithings, or places, from, through, near, or to which any such corps of militia, or detachment thereof, shall be ordered to march, requiring them to provide such sufficient carriages to convey the arms, clothes, accoutrements, powder, match, bullets, and other stores, with able men to drive such carriages, as shall be mentioned in such order; but in case such sufficient carriages and men cannot be provided within such

Carriages to be provided.

such county, riding, hundred, division, or place; then any justice for any adjoining county, riding, or place, shall, upon such order as aforesaid being shewn to him, issue his warrant in like manner within such adjoining county, riding, or place, for the purposes aforesaid, to make up such deficiency of carriages and men. *s.* 80.

Pay for the
same.

And such lieutenant, deputy lieutenant, colonel, or other chief commissioned officer, requiring such carriages and men, shall at the same time pay to every such chief constable or other officer for the use of the person who shall provide such carriages and men, the sum of 1 s. for every mile any waggon with five horses, and any wain with six oxen, or with four oxen and two horses shall travel; and 9 d. for every mile any cart with four horses shall travel, and so in proportion for carriages drawn by a less number of horses or oxen, for which such chief constable or other officer shall give a receipt. *id.*

To go only one
day's journey.

And such chief constables, petty constables, or other officers, shall order and appoint such persons having carriages within their respective divisions as they shall think proper, to provide and furnish such carriages and men, according to such warrant; which persons so ordered shall provide and furnish the same accordingly, for one day's journey and no more. *id.*

Allowance from
the county.

And in case any such chief constables, constables, or other officers, shall be at any charge for such carriages, over and above what is so received by them as aforesaid, such overplus shall be borne by every county, riding, or place where such additional expence shall be incurred, and be repaid to them without fee, by the treasurer out of the publick stock. *id.*

Muskets to be
marked.

And all muskets for the service of the militia shall be marked with the letter M, and the name of the county or place to which they belong. *s.* 85.

Selling, pawn-
ing, or refusing
to deliver up
clothes, arms,
&c.

And if any militia man shall sell, pawn, or lose any of his arms, clothes, or accoutrements, or neglect or refuse to return the same in good order, to his captain or person appointed to receive the same, he shall forfeit not exceeding 3 l. and if not immediately paid, the justice before whom he is convicted shall commit him to the house of correction for any time not exceeding three months, or until such penalty be paid. *id.*

Penalty on buy-
ing arms, &c.

If any person shall knowingly and willingly buy, take in exchange, conceal, or otherwise receive, any arms, clothes, or accoutrements, belonging to any militia man, on any pretence whatsoever, he shall forfeit 5 l.; which if not immediately paid, and he shall not have sufficient goods whereon

whereon to levy the same; the justice before whom he is convicted, shall commit him to gaol for three months, or shall cause him to be publicly whipped; at the discretion of such justice. *f. 86.*

And the arms, when the militia are not embodied, shall be kept in such convenient place, as the colonel, or (where there is no colonel) commanding officer shall direct, with the approbation of the lieutenant. *f. 90.*

Arms, &c. to be deposited.

And one third part of the serjeants, corporals, and drummers shall constantly reside within the city, town, or place where the arms are kept, and shall be under the command of the adjutant, who shall act in such command under the orders of the colonel, or (if there is no colonel) commanding officer. *f. 91.*

One third of the serjeants, &c. to reside where the arms are kept.

And no serjeant, corporal, or drummer, shall be absent from such city, town, or place, without a regular furlough from his colonel or commanding officer; on pain of being liable to be apprehended as a deserter. *id.*

And not to be absent without a furlough.

And such adjutant shall never absent himself from such city, town, or place, without leave of the colonel, or (where there is no colonel) of the commanding officer. *id.*

Adjutant not to be absent without leave.

Provided nevertheless, that whenever such adjutant shall be absent with leave as aforesaid, then such serjeants, corporals, and drummers, shall be under the command of the serjeant major, or of some serjeant to be appointed by such adjutant, with the approbation of such colonel or commanding officer, to act as serjeant major during the absence of such adjutant. *id.*

In his absence, the serjeant major to act.

And the colonel or commanding officer of every regiment, battalion, or independent company shall, as often as they shall be called out to annual exercise, return to his majesty's lieutenant a true state thereof; and if he shall refuse or neglect for six months after the annual exercise so to do, he shall forfeit 100 l. *f. 81.*

Return to be made to the lieutenant after annual exercise.

And the adjutant, or in his absence the serjeant major, shall make a monthly return of the true state of the serjeants, corporals, and drummers, to the lieutenant of the county, and to the commanding officer; and in default thereof, such adjutant or serjeant major shall be subject to such punishment as a court martial shall adjudge. *f. 91.*

Monthly returns of the serjeants, &c. to be made to the lieutenant.

The lieutenant, or three deputy lieutenants of every county, riding, or place, where the militia shall be raised, shall, on or before the 25th day of December yearly, transmit a certificate to the clerk of the peace, containing an account of the names, number, and rank of the officers, and the number of private men of the militia in that year, and the time during which such militia hath been trained and

Return to be made to the clerk of the peace annually.

If no return is made.

and exercised; and every such clerk of the peace shall deliver such certificate to the justices at their general quarter sessions next after 25th *December* yearly, on the day on which such sessions shall be opened, and the same shall be filed amongst the records of such sessions. And where no such certificate shall be received by the clerk of the peace as aforesaid, he shall certify the same under his hand and seal to the justices so assembled, and the same shall be filed in like manner. *f. 116.*

Copy thereof to be transmitted to the treasury and receiver-general.

And such clerk of the peace shall within 14 days after such sessions, transmit to the treasury, and also to the receiver general of the land tax, a copy signed by him of every certificate which he shall have received as aforesaid: and where such certificate shall have been omitted, he shall in like manner certify such omission, and that he hath certified such omission to the justices at such sessions, and required them to proceed according to the directions of this act. *f. 124.*

Penalty.

And if any clerk of the peace shall refuse or wilfully neglect to receive, deliver, file, make, record, or transmit any such certificate as aforesaid, he shall forfeit 100 l. and his office, and be rendered incapable of having, receiving, or holding any office of trust, civil or military, under the crown. *f. 126.*

XI. Cloathing and Pay.

The pay of the *embodied* militia will be specified when we come to treat of their being drawn out into actual service.

Pay when unembodied.

The pay of the *unembodied* militia is directed by annual acts. That which is here specified is the 32 G. 3. c. 26. By which it is enacted, that in every place where the militia is or shall be raised, the receiver general of the land tax for such place shall issue and pay as followeth:—For the pay of the said militia for 4 calendar months in advance, at the rate of 6 s. a day for each *adjutant*; 1 s. for each *serjeant*, with the addition of 2 s. 6 d. a week for each *serjeant major*; 6 d. a day for each *drummer*, with the addition of 6 d. a day for each *drum major*; and at the rate of 8 d. a day for each *corporal*; and at the rate of 4 d. a month for each private man and drummer for defraying *contingent expenses*, one penny whereof to be applied to the hospital expenses when they are out upon their annual exercise; and for half a year's salary for the *clerk of the regiment or battalion* at the rate of 50 l. a year; and to the *clerk of the general meetings* at the rate of 5 l. 5 s. for each meeting; and

to the several *clerks of the subdivision meetings* at the rate of 1l. 1s. for each meeting; and also for *cloathing*, after the rate of 3l. 10s. for each serjeant, and 2l. for each drummer, with the addition of 1l. for each serjeant major and drum major; and 2l. for each corporal, [where they have not been cloathed within two years,] and with respect to the private man at the rate of 1l. 12s. for each private man chosen by ballot to be trained and exercised. *§. 1.*

All which sums of money aforesaid (except what shall be due to the clerks of the meetings, and except what shall be due for cloathing) shall, where the militia has never been embodied, be paid by the receiver general into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of his majesty's lieutenant; and where the militia has been embodied, into the hands of the clerk of the regiment or battalion, on his producing his warrant of appointment to such office under the hand and seal of the colonel, or, where there is no colonel, of the commanding officer, notwithstanding such militia shall have been disembodied; and where the militia shall be formed into independent companies, such sums shall be paid by the receiver general into the hands of the respective captain of such independent company, or to such person as such captain shall authorize to receive the same. *§. 2.*

And the said receiver general shall also within 14 days after the expiration of the third calendar month from the time of the said first payment, make a second payment for four calendar months in advance; and within 14 days after the expiration of the third calendar month from the time of the said second payment, make a third payment for four calendar months in advance; for the pay and contingent expences of the militia, and for the allowances to the regimental or battalion clerk: and the receipt of such clerk, and of such captain of an independent company, or of the person authorized by him as aforesaid to receive the same, shall be a sufficient discharge to the receiver general. *id.*

And the clerk of the regiment or battalion shall forthwith, after the receipt of such sums as aforesaid, pay or cause to be paid one calendar month's pay in advance to the adjutant; and to the captain or commanding officer of each company two months pay in advance for the serjeants, drummers, and corporals; and also to the commanding officer of the company to which the serjeant major and drum major shall belong, two months pay in advance for such serjeant and drum major; and so from time to time

Cloathing.

First payment.

Second payment.

Third payment.

Payments to be made by the regimental or battalion clerk.

so long as any money on that account shall remain in his hands. *f. 3.*

To be distributed
by the captains.

Which pay, every such captain or commanding officer shall distribute to each person belonging to his company, as it shall become due; and shall once in every year give in to the clerk of the regiment or battalion (or if captain of an independent company, to the receiver general) an account of the several payments he shall have made in pursuance of this act, according to the following form :

County of — Dr.		Per Contra — Cr.	
To cash received	l. s. d.	Paid serjeant —	l. s. d.
of Mr. ——— regimental or bat- talion clerk, or re- ceiver general, (<i>as the case shall be</i>), for two months pay in advance.	}	for ——— days pay	}
		from the — day of	
		—— to the ——	}
		of —— following.	
		Ditto as serjeant	}
		major.	
		Paid —— drum- mer, —— days at	}
		6 d. from the ——	
		of —— to the ——	
		of —— following.	}
		Ditto as drum	
		major.	}
		Paid —— corpor- al —— days from	
		the —— of —— to	
		the —— of ——	
		following.	

And shall pay back to the said clerk or to the receiver general, as the case shall be, the surplus (if any) remaining in his hands. *f. 3.*

Serjeants or
drummers being
discharged.

Provided, that in case the commanding officer of any regiment, battalion, or independent company shall certify in writing to the clerk of the same, that he hath discharged any serjeant or drummer as unfit for service; in such case no pay shall be issued for the person so discharged, until another be duly appointed by him : And that no payment be made to any serjeant or drummer who hath been so discharged, or who hath not previously been approved of by the commanding officer, in case of vacancy by death or otherwise. *f. 4.*

Contingent ex-
pences.

And the clerk of each regiment or battalion, out of the money hereby directed to be paid to him for defraying the *contingent expences*, shall yearly pay to the colonel or commanding officer one penny a month for each private man
and

and drummer, for defraying the *hospital expences* during the time of the men's being absent from home on account of their annual exercise; and shall from time to time pay such sums as may be necessary for the *repair of arms*, and the *carriage* and removal thereof, upon an order in writing signed by the colonel or commanding officer; and after payment of such sums as shall be drawn on him by such colonel or commanding officer as aforesaid, he shall yearly make up an account of all such money, and the expenditure thereof, and of the balance remaining in his hands, which said balance shall form a stock purse for the use of the regiment, and transmit the same to the colonel or commanding officer to be by him examined, allowed, and signed; and the account so allowed and signed shall be the proper voucher and acquittal of such clerk for the application and disposal of such money. *f. 5.*

And the money hereby directed to be issued for the contingent expences of each independent company shall be in like manner applied to the particular use of such independent company by the captain thereof; and shall yearly be in like manner accounted for to the receiver general, whose allowance of such account shall in like manner be the proper voucher for the expenditure and disposition thereof. *f. 6.*

And the said regimental or battalion clerk may retain to his own use, out of the money so by him received, such further sums as shall complete the allowance herein-before made for his salary. *f. 7.*

Clerk to retain his own salary.

And the receiver general, so soon as he shall receive a warrant under the hand of the colonel or commanding officer certifying the receipt of the cloathing, which certificate shall certify the number of serjeants, corporals, drummers, and private men for whom the same shall have been supplied; and an order from the said colonel or commanding officer for the money due for the same, payable to the person who furnished the said cloathing, shall pay the sum mentioned in such order to the person entitled to receive the same, (provided the said cloathing shall not exceed the allowance herein-before directed,) and such warrant, order, and receipt, shall be a discharge to the receiver-general. *f. 17.*

Receiver-general to pay for the cloathing.

And whenever his majesty's lieutenant, or any three or more deputy lieutenants, shall have fixed the days of exercise, they shall, as soon as may be, certify the same to the receiver general, specifying the number of men, and the number of days they are to be absent from home on account of such exercise, not exceeding in the whole 28 days; which receiver general shall, within 14 days after

Pay when out at annual exercise.

the receipt of such certificate, pay to the clerk of the regiment or battalion, at the rate of 7 s. 6 d. a day for each *captain*, and at the rate of 3 s. 6 d. a day for each *lieutenant*, and of 3 s. a day for each *ensign*; and also at the rate of 1 s. a day for each *private man* balloted to be trained and exercised, for the number of days he shall be absent from home on account of such exercise; and also at the rate of 1 s. a day for each private man who shall attend the place of annual exercise, but who shall not have been balloted to be trained and exercised, for any number of days not exceeding five, during which such men shall be absent from home on account of their attendance at such place of exercise; and in such counties where there shall be independent companies only, the receiver general shall pay to the captains of the independent companies, at the rate of 7 s. 6 d. a day for each captain, and so of the rest, in like manner as aforesaid; and the said regimental or battalion clerks shall forthwith pay to each captain of the said regiments or battalions the proportion of pay belonging to each captain, and likewise the pay belonging to their respective companies. *§. 8.*

But no man inrolled for three years *only*, and of whom no service nor attendance is required, shall be entitled to any pay or cloathing, nor shall have any claim upon his colonel or commanding officer for any pay, coat, hat, or other article of cloathing, either during, or at the expiration of the term for which he was inrolled. *§. 20.*

Captains to
make up an ac-
count annually.

And each captain shall make up an account of all money by him received on account of such exercise, according to the following form:

County of _____ Dr.		Per Contra _____ Cr.	
l. s. d.		l. s. d.	
To cash received of _____ the regimental or battalion clerk, (or, _____ receiver general, <i>as the case shall be,</i>) for _____ days pay of _____ men _____	}	By my pay as captain _____	_____
		Paid lieutenant _____	_____
		Paid ensign _____	_____
		Paid _____ militia men _____ days _____	_____
		Paid _____ militia men _____ days for their attendance at the place of exercise _____	_____

Which account shall be signed by such captain, and countersigned by the commanding officer; and the said captain shall within ten days after the time of such exercise, deliver such account, and pay the balance (if any) to the regimental

gimental or battalion clerk; or if captain of an independent company, to the receiver general. *f. 9.*

Provided always, that where any regiment, battalion, or independent company of militia, shall be embodied and called out into actual service, and thereby the officers and private men shall be entitled to the same pay as the officers and private men in his majesty's other regiments of foot receive; all pay from the receiver general, whether to the adjutants, serjeants, private militia men, or others, and all money allowed as aforesaid for contingent expences, and also the allowance to the clerk of the regiment or battalion, shall during such time of actual service cease and not be paid. *f. 10.*

No pay to issue during actual service.

And the receiver general shall pay to the clerk of the general meetings his allowance at the rate of 5 l. 5 s. for each meeting on his producing an order for that purpose from his majesty's lieutenant, or from three deputy lieutenants assembled at a general meeting. *f. 11.*

Allowance for general meetings.

And shall also pay to each and every the clerks of the subdivision meetings, their several allowances at the rate of 1 l. 1 s. for each meeting; on his or their producing an order or orders respectively, from one or more deputy lieutenants assembled in the several subdivision meetings: which order shall be a sufficient discharge to the receiver general, and be allowed in his account. *id.*

And subdivision meeting.

Provided always, that the regimental or battalion clerk shall give security to the receiver general, by bond to his majesty, in the penalty of one half the sum required for the whole year's charge of the regiment or battalion, for duly answering and paying such sums as he shall from time to time receive, and for duly accounting for the same, and for the performance of his trust; which bond shall be lodged with the receiver general, and by him in case of failure shall be put in suit. *f. 12.*

Clerk to give a bond.

And the said clerk of the regiment or battalion, and the captain of every independent company of militia, shall, between *March 25*, and *June 24*, deliver to the receiver general a fair account in writing, of all money by him received and disbursed for the service of the preceding year, with proper vouchers for the same; and shall pay back to him any surplus that shall then be in his hands: which said accounts, signed by such clerk, or such captain of an independent company respectively, shall be transmitted by the receiver general into the office of the auditor of the revenue. *f. 13.*

Clerk, &c. to deliver an account annually.

And in case any regiment, battalion, or independent company, shall cease and determine, the sum of three shillings per day shall be paid to such person as has actu-

Penalties and
costs.

ally served as adjutant to such regiment, battalion, or independent company, from the time the same shall cease to the 25th day of *March* 1788. *f.* 21.

And all penalties, costs, and charges of suit, and sums of money for which any person is by this act made answerable, may be recovered in any of his majesty's courts of record at *Westminster*. *f.* 14.

And no fee or gratuity shall be given or paid for any warrant or sum of money which shall be issued in pursuance of this act. *f.* 15.

XII. Drawn out into actual service.

To be drawn out
in case of inva-
sion, or rebel-
lion.

In case of actual invasion, or upon imminent danger thereof, and in all cases of rebellion or insurrection, it shall be lawful for his majesty (the occasion being first communicated to parliament, if the parliament shall be then sitting; or declared in council, and notified by proclamation, if no parliament shall be then sitting or in being) to order his lieutenants, or on their death or removal or absence from their respective counties, ridings, or places, three deputy lieutenants, with all convenient speed, to draw out and embody all the regiments, battalions, and independent companies of their respective counties, ridings, or places, herein-before appointed to be raised and trained, or so many of them as he shall judge necessary, in such manner as shall be best adapted to the circumstances of the danger. 26 G. 3. c. 107. *f.* 95.

Parliament then
to meet.

And whenever the militia shall be drawn out and embodied as aforesaid, if the parliament shall then be separated by such adjournment or prorogation as will not expire within 14 days, his majesty may and shall issue a proclamation for the meeting of the parliament within 14 days, and the parliament shall accordingly meet and sit upon such day as shall be appointed by such proclamation, and continue to sit and act, in like manner to all intents and purposes, as if it had stood adjourned or prorogued to the same day. *f.* 97.

To be put under
the command of
general officers.
And led to any
part of the king-
dom.

And his majesty may put the said forces under the command of such general officers as he shall appoint. *id.*

And direct them to be led by their respective officers into any part of this kingdom, for the repelling and prevention of any such invasion, and the suppression of any rebellion or insurrection within the same. *id.*

But not to go out
of the kingdom.

Provided, that neither the whole or any part of the militia shall on any account be carried, or ordered to go out of *Great Britain*. *f.* 96.

And

And the officers, drummers, and private men, shall from the time of their being drawn out and embodied as aforesaid, and until they shall be returned again to their respective parishes or places of abode, remain under the command of such general officers; and during such time as aforesaid, all the provisions contained in any act of parliament which shall be then in force for punishing mutiny and desertion, and for the better payment of the army and their quarters, shall be in force with respect to the militia in all cases whatsoever. *f. 95.*

To be under the command of their officers, and subject to the acts against mutiny, &c.

And the lieutenant, or (on his death or removal, or in his absence from his county, riding, or place) any three deputy lieutenants, to whom such order as aforesaid shall be directed, shall issue their orders to the chief constables or other officers of the several hundreds, rapes, laths, wapentakes, or other divisions, within their respective counties, ridings, and places, with directions to forward the same immediately to the constables or other officers of the several parishes, tithings, and places within their respective divisions; and such constables or other officers shall forthwith cause notice in writing to be given to the several militia men, or left at their usual places of abode, to attend at the time and place mentioned in such order. *f. 98.*

Notice to be given for raising the men.

And if any militia man so ordered to be embodied as aforesaid (not labouring under any infirmity incapacitating him to serve as a militia man) shall not appear and march in pursuance of such order, he shall be liable to be apprehended and punished as a deserter. *id.*

Penalty of not appearing.

And if any person shall harbour or conceal any militia man, when ordered out into actual service, knowing him to be a militia man, he shall forfeit 5 l. *id.*

Harbouring or concealing militia men.

And from the date of the king's warrant for drawing out the militia into actual service, the officers and private men shall be entitled to the same pay as the officers and private men of his majesty's other regiments of foot receive, and no other. *f. 103.*

To be entitled to the same pay as the other forces.

And there shall be an additional number of serjeants, corporals, and drummers appointed, so that there be one serjeant and one corporal to every 20 men, and one additional drummer to each company. *f. 64.*

An additional number of serjeants, &c. to be appointed.

And when the militia shall be ordered out into actual service, the receiver general of the land tax for such county, riding, or place, shall pay to the captain or other commanding officer of every private company so ordered out, one guinea for the use of every private man belonging to his company; and also one guinea for every recruit, as early as may be after he shall have joined his company, while

To receive one guinea when ordered out.

out in actual service; and the money so received by such captain or commanding officer (or so much thereof as he shall think proper) shall be laid out in the manner he shall think most advantageous for each respective man; and before he is discharged, such captain or commanding officer, shall account to such man how the said money hath been applied, and shall pay the remainder (if any) to such militia man. *f. 101.*

To receive also from the township, half the price paid for volunteers.

And in case any person not possessed of an estate in land, goods, or money, of the clear value of 500*l.* and who shall make oath that he is not possessed of such estate, shall be balloted to serve in the militia, when drawn or ordered out for actual service, and such person shall be sworn and inrolled, or provide a substitute who shall be sworn and inrolled; the churchwardens or overseers of the place for which he serves, shall on receiving an order (G) under the hands of two deputy lieutenants acting within the subdivision wherein such parish or place is situate, pay to every such person so chosen by lot, any sum not exceeding the sum which such deputy lieutenants shall adjudge to be as near as may be, one half of the current price then paid for volunteers in the county, riding, or place where such person was so chosen, which said sum shall be taken out of the poor rate to be made (as aforesaid) for providing volunteers, or in case no volunteer shall be provided, then out of a rate to be made and collected agreeable to the poor rate. *f. 41.*

Penalty on not paying the same.

And if any churchwarden or overseer shall refuse or neglect to pay such money upon demand and the producing of such order, he shall forfeit 5*l.* half to the person balloted in lieu of the sum ordered to be paid to him as aforesaid. *id.*

Exception, if the man is discharged within one month.

Provided, that if such man chosen by ballot and serving for himself, shall within one month after his inrollment, be disapproved of and discharged by the commanding officer, such sum shall not be paid to him, but shall be paid in manner before-mentioned, to the next person balloted in his stead; and if any substitute shall be disapproved and discharged in manner aforesaid, then no such sum shall be paid to the man so balloted, unless he shall serve himself or find another substitute who shall be approved by such commanding officer as aforesaid. *id.*

[N. B. Although, by the former part of this section, the deputy lieutenants seem to have a discretionary power to give the order immediately on inrollment, yet from the latter part it seems prudent, if not necessary, to withhold the order for one month after the inrollment; that time being

being allowed to the commanding officer to disapprove and discharge; especially as the forfeiture of 5 l. is incurred by the churchwarden or overseer on his refusal or neglect to pay the money on demand and producing the order.]

And whenever any body of militia shall be embodied and absent from the county, riding, or place to which it belongs, the commanding officer shall apply to every man whose time shall be within four months of expiring, and who in his judgment shall be fit to serve, and enquire if he is willing to continue in the service for such term as any man who should be then balloted would be subject to, and for what price; and shall on the first day of *January, March, May, July, September, and November* respectively, or as soon after as conveniently may be, transmit to the clerk of the general meetings, a list of all such as he shall find willing to continue in the service, and for what prices, which list shall be signed by every such militia man, and shall be made in the following form:

Return to be made of men willing to continue their service.

Dated the _____ day _____ of _____

Name of the county.	Names of the men actually serving.	If substitutes, for whom they serve.	Of the parish of	In the hundred of	Time of service expires on the	Sum for which they engage to serve.	Signature of consent.
	A. B. E. F.	C. D. L. M.	P. Q.	H. I.			A. B. C. D.

And the signing of the said roll shall be binding upon the persons signing the same to all intents and purposes whatsoever. *f. 46.*

And when the term of service of any person so balloted and inrolled shall be prolonged as aforesaid beyond the term of five years, such receiver general shall pay to the captain or commanding officer of each company, the sum of one guinea for every person whose service shall be so prolonged; and in case such term shall be prolonged for more than three years, then at the end of three years, he shall pay the like further sum of one guinea, and so on in like manner at the expiration of every additional term of three years the like further sum of one guinea; which shall be laid out and accounted for by such captain or commanding officer in manner as aforesaid. *f. 102.*

Bounty to be paid when the term of service is prolonged.

No officer serving in the militia, shall sit in any court martial upon the trial of any officer or soldier serving in any of his majesty's other forces; nor shall any officer serving in any of his majesty's other forces, sit in any court

Militia officers not to sit on the trial of officers of the other forces.

court martial upon the trial of any officer or private man serving in the militia. *f.* 99.

When disembodied to be put upon the same footing as before they were drawn out.

When such militia shall be again disembodied and dismissed to return to their several places of abode, they shall be subject to the same orders, directions, and engagements only, as they were subject to under the provisions of this act before they were drawn out into actual service. *f.* 104.

XIII. Privileges and exemptions of militia men.

Half-pay officers.

No officer who is entitled to half pay shall be deemed to forfeit or quit such half pay during the time he shall serve as lieutenant, ensign, adjutant, battalion clerk, paymaster, quartermaster, or surgeon in the militia, but the same shall nevertheless continue; and instead of the oath directed by the act for punishing mutiny and desertion, &c. to be taken by such officer, he shall take the following oath:

I A. B. do swear, that I had not, between the ——— any place or employment of profit, civil or military, under his majesty, besides my allowance of half pay as a reduced ——— in ——— late regiment of ——— save and except my pay as lieutenant, &c. [as the case may be] for serving in a regiment of militia.

And the taking the said oath shall, without taking any other oath, be sufficient to entitle such person to receive his half pay. *f.* 63.

And by the pay act 27 G. 3. c. 8. *f.* 16. (which is in force to 25th March 1788.) any person being on half pay, or intitled to any allowance as having served in any or either of the two troops of horse guards, or regiment of horse reduced, and serving in the militia, may receive the subsistence directed to be paid to captains, lieutenants, or ensigns; and the same shall not be deemed a taking pay so as to prevent such person from receiving his half pay, on his taking the aforesaid oath before some justice.

Officers exempted from the office of sheriff.

No person, being an officer in the militia, shall be compelled to serve the office of sheriff. 26 G. 3. c. 107. *f.* 128.

May go to vote at elections.

And no officer or private man serving in the militia, shall be liable to any penalty or punishment for or on account of his absence during the time he shall be going to vote at any election of a member to serve in parliament, or returning from such election. *f.* 129.

Exempted from parish officers.

No serjeant, corporal, or drummer of the militia, nor any private man, shall, from the time of his inrollment, until

until his discharge, be compelled to serve as a peace officer, or parish officer. *f.* 130.

Nor to perform any highway duty commonly called *statute work.* *id.*

And highway duty.

Nor to serve in any of his majesty's sea forces. *id.*

And from serving in the sea forces.

And every person having served in the militia when drawn out into actual service, *being a married man*, may set up and exercise any *trade* in any town or place within Great Britain without any molestation by reason of the exercising such trade; and with and under the same provisions, regulations, and exceptions as any mariner or soldier may do by 22 G. 2. c. 44. and 24 G. 3. c. 6. And no such militia man shall be liable to be removed out of any town or place until he shall become chargeable to the parish. *f.* 131.

May set up trades.

And no such militia man shall be liable to be removed. But in the case of *K. v. Gwemop*, H. 29 G. 3. it was adjudged, that a *husbandman* was not a *trade*, within the meaning of the act, and therefore such militia men may be removed before they become chargeable. *Durnf. & East*, 3 V. 133. (a).

Are not removable until chargeable.

Moreover any person being a serjeant on the establishment of *Chelsea hospital*, at the allowance of 12 d. a day, and being appointed to serve in the militia, may receive the said allowance together with his pay from such militia. *f.* 67.

Chelsea hospital.

And any person who shall have faithfully served as a *serjeant* in the militia for 15 years, or as a *corporal* or *drummer* for 20 years, and who shall be discharged on account of age or infirmity, shall, on the recommendation of the commanding officer of the regiment, &c. and the lieutenant, and two deputy lieutenants of the county or place to which such regiment, &c. belongs, (or on the death or removal, or in the absence of the lieutenant, by the commanding officer and three deputy lieutenants,) be entitled to examination at the *Chelsea board*, and be capable to be placed on the pension of 5 d. per day, if the said board shall judge him deserving thereof. *f.* 67.

Provided nevertheless, that no person appointed a serjeant in the militia, after the passing of this act, shall be entitled to such recompence, until he shall have served in the militia, or in the army and militia for 20 years. *id.*

And if any non-commissioned officer or private man of the militia shall be maimed or wounded in actual service, he shall be equally entitled to the benefit of *Chelsea hospital*

(a) See this case more at large, tit. *Door. Removal.*

Gaolers are required to receive deserters.

And all gaolers and keepers of prisons, if required by such serjeants, corporals, or drummers employed in conveying any such deserters to the regiment or battalion to which they belong, shall receive into their custody and confine such offenders for such time as shall be required, not exceeding 24 hours; on pain of forfeiting 20 s. *id.*

Serjeants, &c. employed in conveying deserters to be billeted.

And all such serjeants, corporals, and drummers, while employed in executing such duty as aforesaid, shall be billeted in like manner as serjeants, corporals, or drummers belonging to the other forces employed in apprehending and conveying deserters, are to be billeted. *id.*

Reward for apprehending deserters.

And the justice before whom any deserter shall be convicted, shall issue his warrant to the clerk of the regiment or battalion to which such deserter shall belong, or (where there is no clerk) to the commanding officer, requiring such clerk or commanding officer to pay 20 s. out of the regimental stock to the person who apprehended such deserter, which such clerk or commanding officer is required to pay accordingly upon demand. *f. 93.*

Concealing deserters.

And if any person shall harbour, conceal, or assist any deserter, knowing him to be a deserter, he shall forfeit 5 l. *f. 94.*

Serjeants, &c. absenting themselves without furlough to be deemed deserters.

And if any serjeant, corporal, or drummer, being appointed to reside where the arms are kept as before directed, shall be absent from such city, town, or place, where such arms are kept, without a regular furlough from his colonel, or (where there is no colonel) from the commanding officer, he shall be liable to be apprehended as a deserter. *f. 91.*

XV. Proceedings where the militia shall not be raised annually.

Counties not raising their militia to pay 5 l. per man.

And whereas it may happen, through neglect or otherwise, that in some county or place, the militia may not be raised as aforesaid; and it is reasonable, that all his majesty's subjects should contribute equally towards the expence of raising and supporting a militia for the defence of the kingdom; it is enacted, that in every county and place where no certificate shall have been transmitted to the clerk of the peace of the militia having been raised according to the directions of this act, he shall certify the same under his hand and seal to the justices at their quarter sessions next after the 25th day of *December* yearly, which certificate shall be filed amongst the records of such sessions. And the sum of 5 l. shall be annually paid in lieu of

of every militia man directed to be raised within such county or place. *f.* 116, 117.

And the justices at their sessions to be held next after the 25th of *December* annually, shall rate and assess the said sum of 5*l.* per man as aforesaid, upon every such county or place in like manner as the county rate. *f.* 117.

Provided that no person residing or having an estate within such county or place, who shall have served as an officer for four years, or shall be then serving in the militia as an officer, shall be liable to pay any part of the said rate, provided he shall have delivered a certificate of such service to the clerk of the peace for the county or place wherein he shall claim such exemption, and also a list of his tenants and their places of abode, and shall sign the same; which certificate and list shall in like manner be filed at the sessions: and whenever such assessment shall be ordered to be raised within such county or place, such clerk of the peace shall certify to the high constables, the names of the persons whose certificate shall have been so filed, and the names of their tenants inserted in such list; which shall be transmitted by such high constables to the petty constables of every township or place wherein the lands of such person are situate, in order that the same may not be charged to such assessment. *id.*

And where a certain number of militia men are directed to be raised for any county, together with any city or town being a county of itself, and the militia shall not be raised for such county, city, or town; the payment of the said sum of 5*l.* per man shall be divided and apportioned between them, in like proportion as the respective quotas paid by them to the land tax bear to each other, unless the apportionment of the number of such militia men shall actually have been made in pursuance of the lists directed to be returned as aforesaid, in which case the same shall be borne in such proportions as the respective numbers of militia men so apportioned to be raised by such county, and such city or town, bear to each other. *f.* 118.

And whereas there are several cities, towns, and places which do not contribute to the county rates, and doubts may arise whether such places can be legally rated, it is enacted, that in all such places not rated to the county rate, such proportion of the said sum of 5*l.* per man shall be levied by a separate assessment, in like manner as the poor rate, by the churchwardens and overseers, who shall pay over the same to the treasurer of the county with which such city, town, or place, shall be joined. *f.* 119.

And

To be assessed as the county rate.

Officers serving, or having served.

The assessment to be proportioned between counties, and cities being counties of themselves.

Where there are no county rates, the assessment to be raised by the poor rate.

And if not paid before 1st June annually, to be levied by distress.

And when the money which ought to have been paid by such city, town, or place not rated to the county rate, shall not be paid to the treasurer of the county as aforesaid, before the first day of *June* yearly, the justices at their next *Midsummer* sessions shall issue an order to the overseers of the poor of every parish or place within such city, town, or place, requiring them to certify and return to the next *Michaelmas* sessions, the several quotas that every such division pays to the land tax for that year; and on such certificate and return being made, the justices at the said *Michaelmas* sessions shall by warrant to the constable of every such parish or division, levy the same by distress of the goods and chattels of the churchwardens and overseers of such parish or division, who shall be reimbursed the money so levied on them respectively, by the same ways and means as money expended for the relief of the poor. *f. 121.*

Where a town lies in two counties.

And where any town lies in two counties, the money to be paid by such town shall be paid to the treasurer of the county wherein the church is situate. *f. 120.*

The treasurer to pay the assessment to the receiver general of the land tax.

And the treasurer who shall receive the sum of 5l. per man as aforesaid, or any part thereof, shall pay the same within one month to the receiver general of the land tax, who shall give a receipt for the same, which receipt shall be a sufficient discharge for the payment; and when the whole sum shall be so paid, such payment shall be a full discharge and indemnification to such county or place, for not raising the militia for the year in respect whereof such payment shall be made. *f. 122.*

To have an allowance for his trouble.

And such treasurer shall be allowed 1d. in the pound upon the whole sum so by him received and paid, which he may detain out of the money so received before payment to the receiver general. *f. 123.*

Allowance to the constables, &c.

And every high constable, petty constable, churchwarden, and overseer, who shall act in the raising and collecting the said money, shall respectively be allowed and paid by such treasurer 1d. in the pound of all such money, and such treasurer may deduct the same out of the money so received by him, and pay the respective proportions thereof to such high constables and other officers aforesaid. *id.*

Copies of the returns to be transmitted to the treasury.

And such clerk of the peace shall within fourteen days after the sessions holden next after 25th *December* yearly, transmit to the treasury, and also to the receiver general of the land tax, a copy signed by him of every certificate which shall have been received as aforesaid, and where such certificate shall have been omitted, he shall in like manner certify such omission, and that he hath certified the

of every militia man directed to be raised within such county or place. *f.* 116, 117.

And the justices at their sessions to be held next after the 25th of *December* annually, shall rate and assess the said sum of 5*l.* per man as aforesaid, upon every such county or place in like manner as the county rate. *f.* 117.

To be assessed as the county rate.

Provided that no person residing or having an estate within such county or place, who shall have served as an officer for four years, or shall be then serving in the militia as an officer, shall be liable to pay any part of the said rate, provided he shall have delivered a certificate of such service to the clerk of the peace for the county or place wherein he shall claim such exemption, and also a list of his tenants and their places of abode, and shall sign the same; which certificate and list shall in like manner be filed at the sessions: and whenever such assessment shall be ordered to be raised within such county or place, such clerk of the peace shall certify to the high constables, the names of the persons whose certificate shall have been so filed, and the names of their tenants inserted in such list; which shall be transmitted by such high constables to the petty constables of every township or place wherein the lands of such person are situate, in order that the same may not be charged to such assessment. *id.*

Officers serving, or having served.

And where a certain number of militia men are directed to be raised for any county, together with any city or town being a county of itself, and the militia shall not be raised for such county, city, or town; the payment of the said sum of 5*l.* per man shall be divided and apportioned between them, in like proportion as the respective quotas paid by them to the land tax bear to each other, unless the apportionment of the number of such militia men shall actually have been made in pursuance of the lists directed to be returned as aforesaid, in which case the same shall be borne in such proportions as the respective numbers of militia men so apportioned to be raised by such county, and such city or town, bear to each other. *f.* 118.

The assessment to be proportioned between counties, and cities being counties of themselves.

And whereas there are several cities, towns, and places which do not contribute to the county rates, and doubts may arise whether such places can be legally rated, it is enacted, that in all such places not rated to the county rate, such proportion of the said sum of 5*l.* per man shall be levied by a separate assessment, in like manner as the poor rate, by the churchwardens and overseers, who shall pay over the same to the treasurer of the county with which such city, town, or place, shall be joined. *f.* 119.

Where there are no county rates, the assessment to be raised by the poor rate.

And

or place, shall refuse or neglect to return any such lists before directed; or to comply with such orders and directions as he shall from time to time receive from such deputy lieutenants in pursuance of this act, or shall in making such return be guilty of any fraud or wilful partiality, or gross neglect in his duty, such deputy lieutenants are empowered and required to commit such offender to gaol for one month, or at their discretion may fine him not exceeding 5*l.* nor less than 40*s.* *f.* 30.

Power to administer oaths.

And in all cases in the execution of this act, when any matter or thing is directed to be enquired of, or examined into, upon the oath of any witness before the lieutenant or any deputy lieutenant, or justice, such lieutenant, deputy lieutenant, or justice, is authorised to administer such oath. *f.* 52.

Indemnity of lieutenants and deputy lieutenants.

And the provisions of 24 G. 2. c. 44. for rendering justices more safe in the execution of their office, shall extend to all lieutenants and deputy lieutenants acting in the execution of this or any other act relating to the militia in like manner, and as fully and effectually as the same extend to justices in the execution of their office. *f.* 127.

General levying of forfeitures.

All fines, penalties, and forfeitures, by this act imposed exceeding 20*l.* shall be recovered in the courts at *Windsor*; if not exceeding 20*l.* shall upon proof on oath before one justice, be levied by distress, and for want of sufficient distress, such justice shall (in all cases where no particular times of commitment is herein-before directed) commit such offender to the common gaol for any time not exceeding three months. *f.* 132.

Application thereof.

And the money arising from such fines, penalties, and forfeitures, the application whereof is not otherwise particularly directed, shall be paid to the clerk, or (where there is no clerk) to the commanding officer of the regiment or battalion, and shall be made part of the publick stock. *id.*

Jurisdiction.

The several towns and places in the act mentioned, and deemed to be situate within, and part of the several counties, ridings, and places aforesaid, for the purposes of this act, shall be subject to the jurisdiction and authority of the lieutenants, deputy lieutenants, justices of the peace, and other officers of the respective counties, ridings, and places, within which such towns and places are hereby deemed to be situate. *f.* 108.

Certiorari.

No order or conviction, by virtue of this act, shall be removed by certiorari, nor execution or other proceedings upon such order be superseded thereby. *f.* 133.

Treble costs.

If any suit be commenced against any person, for any thing done in pursuance of this act; the action shall be laid in

in the proper county, within six months, and not afterwards; and the defendant may plead the general issue, and if he prevails shall have treble costs. *f.* 134.

XVII. *Exceptions with respect to particular places.*

His majesty's lieutenants commissioned for the militia of the city of *London*, shall continue to list and levy the trained bands and auxiliaries of the said city in manner as heretofore. *f.* 110. The city of London.

It shall be lawful for the constable of the tower, or lieutenant of the tower hamlets, for the time being, from time to time to appoint his deputy lieutenants, and to give commissions to a proper number of officers to train and discipline the militia to be raised within and for the said division, pursuant to the statute of the 13 & 14 C. 2. and to form the same into two regiments of eight companies each, in such manner as the said constable or lieutenant hath used to do: and also for defraying the necessary charge of trophies and other incident expenses of the militia of the same division, it shall be lawful for his majesty's said constable or lieutenant, to continue to raise in every year the proportion of a fourth part of one month's assessment of trophy money, within the said division or hamlets, in such manner as he hath used to do by the said act of the 13 & 14 C. 2. *id.* *f.* 111. The tower hamlets.

And when such lieutenant shall be out of the kingdom, the deputy lieutenants of the said hamlets, or the major part of them assembled at a publick meeting to be called for that purpose, may do all things relating to the said militia of the said hamlets, which might have been done by the said lieutenant; and no commission, warrant, or appointment granted or made to any deputy lieutenant or other person concerning the militia of the said hamlets, shall be void by the death or removal of the lieutenant. *f.* 112.

And his majesty's said constable of the tower, or lieutenant of the tower hamlets, shall appoint a treasurer of the said trophy money, for receiving and paying such monies as shall be levied by the said act of C. 2. who shall yearly account in writing and upon oath for the same to the said constable or lieutenant, or his deputy lieutenants, or any three of them; which account shall be certified to the justices for the said division at their next sessions. And the said constable or lieutenant shall not issue out warrants for raising any trophy money, until the justices at such sessions shall have examined, stated and allowed the accounts of the trophy money raised for the preceding year, and cer-

tify the same under the hands and seals of four such justices; unless where it shall appear to such justices, that by reason of the death of such treasurer or otherwise, such accounts cannot be passed. *f.* 113.

The Stannaries.

Nothing in this act shall extend to the tinners in *Devon* and *Cornwall*; but the lord warden of the stannaries for the time being, in pursuance of his majesty's commission in that behalf, and such as he shall commissionate and authorize under him, shall use the like powers, and array, assels, arm, muster, and exercise the said tinners, as has been heretofore used, and according to the ancient privileges and customs of the stannaries. *f.* 109.

The cinque ports.

The lord warden of the cinque ports, two ancient towns and their members, and in his absence his lieutenant or lieutenants, shall put in execution within the same all the powers and authorities granted by this act, in like manner as his majesty's lieutenants of counties and their deputy lieutenants may do; and may keep up and continue the usual number of soldiers in the said ports, towns, and members, unless he or they find cause to lessen the same; and the militia of the said ports, towns, and members, shall remain separate from the militia of the several counties within which the said ports, towns, and members are situated. *f.* 114.

Counties of *Sussex* and *Kent*.

In the counties of *Sussex* and *East Kent*, the churchwardens and overseers of the poor of the several parishes shall execute the powers given elsewhere to the constables and other peace-officers. *f.* 115.

Isle of Wight.

After the number of persons, which the *Isle of Wight* is to furnish to the militia of the county of *Southampton*, shall have been appointed by his majesty's lieutenant and the deputy lieutenants, or by the deputy lieutenants of the said county at large; the governor of the said island shall appoint the officers of the militia there, as his majesty's lieutenants of counties may do; and shall appoint five or more deputies to act with him; which deputies and officers shall be qualified and act as is prescribed with respect to like officers in *Wales*. And the militia of the said island shall be raised in the same manner as the militia of the county of *Southampton*, and shall be deemed a part of the militia of the said county. And after the same shall be so raised, the governor, lieutenant governor and deputies shall order and direct the training and exercising the militia within the said island, in the same manner as the lieutenants and deputy lieutenants may do elsewhere. *f.* 106.

Berwick upon Tweed.

All provisions made for the county of *Northumberland* and the militia thereof, shall be in force with respect to the town

town of *Berwick upon Tweed*, except only as to the particulars here expressed and otherwise provided for: and out of the persons returned in the lists for the said town a number of private militia men shall be chosen by lot to serve for the said town, in the same proportion with the private militia men appointed to serve for the other respective hundreds, wards, and other divisions within the said county of *Northumberland*: and if persons can be found within the said town and liberties thereof, with such qualifications as are required for deputy lieutenants and officers within cities and towns which are counties of themselves; the chief magistrate of the said town of *Berwick* shall appoint five deputy lieutenants, and such number of officers of the militia as shall be proportionable to the number of militia men which the said town shall raise, as their quota towards the militia of the county of *Northumberland*. And the said militia shall annually join the militia of the county of *Northumberland*, and be exercised together, and shall then, and also in time of actual service, be deemed the militia of the county of *Northumberland* for the purposes aforesaid.

§. 105. The inhabitants of the constabulary of *Craike*, a parcel of the county of *Durham* surrounded by the North Riding of the county of *York*, shall serve in the militia of the said North Riding. §. 107.

The inhabitants of that part of the parish of *Maker* that lies in the county of *Cornwall*, shall serve in the militia of the said county. *id.*

The inhabitants of the town and parish of *Wokingham*, shall serve in and be trained and exercised with the militia of the county of *Berks*. *id.*

The inhabitants of the township of *Filey*, shall serve in the militia of the East Riding of the county of *York*. *id.*

The inhabitants of *Threapwood* shall serve in the militia of the county of *Flint*, and be trained and exercised with the militia of the parish of *Wrothbury*. *id.*

The inhabitants of the parish of *St. Martin*, called *Stamford Baron*, in the suburbs of the borough and town of *Stamford*, on the south side of the waters there, called *Welland*, shall serve in the militia of the county of *Lincoln*. *id.*

A. Form of a precept to the high constable for ordering lists to be returned; with the petty constable's warrant thereupon.

Westmorland. } To H. C. gentleman, chief constable
of the East Ward within the said
county.

WE A. D. B. D. and C. D. esquires, three of his
majesty's deputy lieutenants, for the county aforesaid, at
our general meeting for that purpose assembled, do hereby require
you to issue out your warrants to the several petty constables
within your said ward, according to the form hereon indorsed.
Given under our bands and seals the ——— day of ———
in the year ———

Form of the said warrant indorsed.

Westmorland, }
East Ward. } To the constable of ———

BY virtue of an order from the deputy lieutenants in and for
the said county, at their general meeting for that purpose as-
sembled, unto me directed, you are hereby required to make out
a fair and true list in writing of all men usually and at this
time dwelling within your constablewick, between the ages of
eighteen and forty five years, distinguishing therein their rank
and occupations, and which of the said persons labour under any
infirmities likely to incapacitate them from serving as militia
men; and also which of them (if any) is an officer or private man
serving in his majesty's other forces, or a commission officer or serv-
ing or who has served for four years in the militia, or a private
man serving or who has served in the militia by himself or sub-
stitute for three years, or until legally discharged, or a member
of either of the universities, clergyman, licensed teacher of any
separate congregation, constable, or other peace officer, article
clerk, apprentice, seaman, or seafaring man, or poor man who
has two children born in wedlock. Which list, so fairly and
truly made as aforesaid, you are hereby required to return upon
oath to the deputy lieutenants and justices of the peace for the
said county, at their meeting for that purpose to be held on the
——— day of ——— next ensuing the date hereof, at
in the said county. And you are hereby further required to affix
a true copy of the said list, so to be made out as aforesaid, on the
door of the church or chapel belonging to your respective parish or
township, or place; and if such place hath no church or chapel
belonging

belonging thereto, then on the door of the church or chapel of some parish or place thereto adjoining, on some Sunday morning, which shall be three days at the least before the said ——— day of ———. And also you are to affix notice in writing at the bottom of the said list, of the day and place of the said meeting, and that all persons who shall think themselves aggrieved may then appeal, and that no appeal will be afterwards received. Herein fail you not. Given under my hand, the ——— day of ——— in the year of our Lord ———.

H. C. chief constable of
the said ward.

B. Precept to the high constable for issuing his warrants to the petty constables, to give notice of the number appointed to serve within each parish or place, and of the time and place for balloting.

Westmorland. } To H. C. gentleman, chief constable
of the West Ward within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, [and J. P. esquire, justice of the peace, in case only one deputy lieutenant be present,] in and for the said county, at our subdivision meeting assembled, for proportioning the number of private militia men to serve for each parish, tithing or place, within the said ward, do hereby require you to give notice to the several petty constables within your said ward, of the number of men appointed by us to serve for the several parishes, tithings, or places within their respective districts, according to the list hereunto annexed; and that our next subdivision meeting, for causing the said men to be chosen by lot to serve in the said militia will be at ——— in ——— in the said county, on the ——— day of ——— now next ensuing. Given under our hands and seals the ——— day of ——— in the year ———.

Form of the said warrant indorsed.

Westmorland, }
West Ward. } To the constable of ———

BY virtue of an order from the deputy lieutenants and justices of the peace for the said county, at their subdivision meeting for that purpose assembled, you are hereby required to give notice,
N 4

Militia (New).

tice, to the several persons within your constablewick liable to serve in the militia of the said county, that ——— men are appointed to serve for the said township;

[Or if the lists of two or more townships are added together, then say, that ——— men are appointed to serve jointly for your said township, and for the township of ——— in the said ward]

and that the next subdivision meeting, for causing the said men to be chosen by lot to serve in the said militia, will be at ——— in ——— in the said county, on the ——— day of ——— now next ensuing. Given under my hand the ——— day of ——— in the year of our Lord ———.

A. C. chief constable of
the said ward.

Note; It may be proper in this case (though not required by the act), and more especially in case of *occasional discharges*, to require the petty constables to give notice to the several persons within their respective districts, liable to be balloted, that they may appear, if they think fit, and shew cause why such discharges should not be made, or such balloting should not be; for they may offer, volunteers; or the cause assigned for such discharge may not be true, and it is reasonable they should have opportunity to disprove it: And consequently, the high constable's warrant to the petty constables may vary accordingly.

Or particular warrants may be issued upon particular occasions. As thus:

Form of a notice to the township to shew cause
against a discharge.

Westmorland. { To the constable of ——— in the
said county.

BY virtue of an order from his majesty's deputy lieutenants and justices of the peace in and for the said county, at their subdivision meeting for putting the laws in execution relating to the militia of the said county, you are hereby required forthwith to give notice to all persons within your constablewick liable to serve in the militia, that if any person or persons can shew just cause why A. M. now serving in the militia for the said constablewick should not be discharged and another man balloted in his place, they may appear at ——— in the said county, on ——— the ——— day of ——— then and there to make their objections. And you are to appear at the same time and place

Militia (New).

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place to certify what you shall have done in the execution hereof.
Given under my hand the _____ day of _____ in the
year _____

A. C. clerk of the sub-
division meetings.

So where the militia is embodied, and a man's service
will expire before the 20th day of November next ensuing,
the notice may be,

. . . . that if any person can shew just cause
why another man should not be ballotted to serve in the militia
of the said county in the place of A. M. whose time of service
will expire before the 20th day of November now next ensuing,
he may appear

C. Precept to the high constable, for issuing his
warrant to the petty constables, to give notice
to the persons chosen by lot, to appear and
take the oath and be inrolled; with the petty
constable's warrant thereupon.

Westmorland. } To H. C. gentleman, chief constable
of the West Ward, within the said
county.

WE A. D. and B. D. esquires, deputy lieutenants, [and
J. P. and K. P. esquires, two of his majesty's justices
of the peace, in and for the said county, in case only one
deputy lieutenant be present,] at our subdivision meeting for
that purpose assembled, do hereby order and require you forth-
with to issue out your warrants to the several petty constables
within your said ward, according to the form hereon indorsed.
Given under our hands and seals the _____ day of _____
in the year of our Lord _____.

Form of the said warrant indorsed.

Westmorland, }
West Ward. } To the constable of _____

BY virtue of an order from the deputy lieutenants [and jus-
tices of the peace, as the case may be] in and for the
said county, at their subdivision meeting for that purpose as-
sembled, you are hereby directed and required to give notice to
A. M. an inhabitant within your constablewick, chosen by lot
at the said meeting to serve in the militia of the said county,
that

Militia (New).

that he do appear at the moot-hall in Appleby in the said county, on — the — day of — next, then and there to take the oath in that behalf required by law, and to be inrolled to serve in the militia of the said county as a private militia man for the space of five years, or otherwise to provide a fit person (to be approved by the deputy lieutenants and justices of the peace that shall be then and there present) to serve as his substitute, who shall take the said oath and be inrolled in manner aforesaid. Which notice you are to give unto him, or to leave the same at his place of abode, at least seven days before the said — day of — next. And be you then there to certify upon oath what you shall have done in the premises. Herein fail you not. Given under my hand the — day of — in the year of our Lord —.

H. C. chief constable of
the said ward.

**Form of the notice to be left at the dwelling-house,
where personal notice cannot be given.**

William Harrison,

NOTICE is hereby given unto you, that you are chosen by lot to serve in the militia of this county of W. and that you are to appear at the moot-hall in A. in the said county, on — the — day of — next, before the deputy lieutenants and justices of the peace for the said county to be then and there assembled, to take the oath in that behalf required, and to be inrolled to serve in the militia of the said county as a private militia man for the space of five years, or otherwise to provide a fit person to be then and there approved by the said deputy lieutenants and justices, who shall take the said oath, and be then and there inrolled as aforesaid. Given under my hand the — day of — in the year of our Lord —.

A. C. constable
of —

To prevent mistakes, it may be best to have printed forms, and to deliver the same properly filled up to the respective constables.

D. Form of an information and complaint against a militia man not appearing to be sworn and inrolled.

Westmorland. { THE information and complaint of
A. I. of ——— in the said county,
gentleman, made upon oath before me J. P. esquire, one of his
majesty's justices of the peace in and for the said county, the
—— day of ——— in the year of our Lord ——— that
A. O. late of ——— in the said county, yeoman, not being
one of the people called quakers, hath been duly chosen by lot to
serve as a private militia man in the militia of the said
county, and hath had due notice to appear before the deputy
lieutenant's and justices of the peace in and for the said county,
at their subdivision meeting for that purpose assembled, to take
the oath in that behalf required, and to be inrolled to serve in
the said militia as a private militia man, or to provide a fit
person to serve as his substitute; and that the said A. O. hath
neglected to take the said oath, and to serve in the said militia,
and hath also neglected to provide any fit person to serve as his
substitute; whereupon he the said A. I. prayeth that justice
may be done against him the said A. O. for the said offence.

A. J.

Before me
J. P.

Summons thereupon.

Westmorland. { To the constable of ———

WHEREAS complaint and information upon oath hath
been made unto me J. P. esquire, one of his majesty's
justices of the peace in and for the said county, that A. O.
late of ——— in the county aforesaid, yeoman, (not being
one of the people called quakers,) hath been duly chosen by
lot to serve as a private militia man in the militia of the said
county, and hath had due notice to appear before the deputy
lieutenants and justices of the peace in and for the said county,
at their subdivision meeting for that purpose assembled, to take
the oath in that behalf required, and to be inrolled to serve in
the said militia as a private militia man, or to provide a fit
person to be approved by the said deputy lieutenants and justices
as aforesaid to serve as his substitute; and that he the said
A. O. hath neglected [or refused] to take the said oath, and

to serve in the said militia, and hath also neglected to provide any fit person to serve as his substitute: These are therefore to require you forthwith to summon the said A. O. to appear before me at the house of — in — in the said county, on the — day of — at the hour of — in the afternoon of the same day, to answer unto the said complaint, and to shew cause why the penalty of ten pounds should not be levied upon his goods and chattels for the said offence. Herein fail you not. Given under my hand and seal the — day of — in the year of our Lord —.

Warrant of distress for the penalty of 10 l.

Westmorland. } To the constable of —

WHEREAS A. O. late of — in the county of —, yeoman, (not being one of the people called quakers,) is this day duly convicted upon oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, for that he the said A. O. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him to appear before the deputy lieutenants and justices of the peace in and for the said county at their subdivision meeting for that purpose assembled, to take the oath in that behalf required, and to be inrolled to serve in the said militia as a private militia man, or to provide a fit person to be approved by the said deputy lieutenants and justices as aforesaid to serve as his substitute, hath neglected to take the said oath, and to serve in the said militia, and also hath neglected to provide any fit person to serve as his substitute; whereby he the said A. O. hath forfeited the sum of ten pounds: These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten pounds to the said deputy lieutenants and justices as aforesaid, or to such person as they shall appoint to receive the same, for the providing of a substitute to serve for him the said A. O. and for the other purposes by law directed for the application thereof; rendering the overplus (if any shall be) on demand unto him the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be found

found of the goods and chattels of him the said A. Q. whereon to levy the said sum of ten pounds, that then you certify the same to me, together with the return of this precept. Herein fail you not. Given under my hand and seal, the ——— day of ——— in the year of our Lord ———.

Constable's return of the want of distress.

Westmorland. **A. C.** constable of ——— in the said county, maketh oath, before me J. P. esquire, one of his majesty's justices of the peace for the said county, the ——— day of ——— in the year ——— that by virtue of my warrant to him directed, to levy the sum of ——— by distress and sale of the goods and chattels of A. Q. late of ——— aforesaid in the county aforesaid, he the said constable hath made diligent search for such goods and chattels, and that he doth not know, nor can find, that be the said A. Q. hath goods and chattels sufficient to answer the said distress.

Before me

A. C.

J. P.

E. Warrant of distress for quakers substitutes.

Westmorland. { **A. D.** and **B. D.** esquires, two of his majesty's deputy lieutenants for the said county; to the high constable of Kendal ward within the said county, and to the petty constables of ——— in the said county, and to each and every of them.

FORASMUCH as **A. Q.** late of ——— aforesaid in the county aforesaid, yeoman, being one of the people called quakers, hath been duly chosen by lot to serve in the militia of the said county, and after due notice given unto him hath neglected to appear, and to take the oath in that behalf required; and to serve in the said militia, and hath also neglected to provide any fit person to serve for him as his substitute; and whereas we the said deputy lieutenants and justices as aforesaid have, upon as reasonable terms as might be, namely for the sum of ——— provided and hired **A. S.** a fit person to serve in the said militia, as the substitute of him the said **A. Q.** We do therefore hereby require you to levy the said sum of ——— by distress and sale of the goods and chattels of him the said **A. Q.** and to pay the same unto ——— for the use of him the said **A. S.** rendering the overplus (if any shall be) unto him the said

said A. Q. after deducting the charges of the said distress and sale. Herein said you not: Given under our hands and seals, the — day of — in the year of our Lord —.

F. Commitment of a quaker for want of sufficient distress.

Westmorland. } To the constable of — in the said county, and to the keeper of the common gaol at A. in the said county.

WHEREAS A. Q. late of — in the county aforesaid, yeoman, being one of the people called quakers, was on the — day of — in the year of our Lord 17 — duly convicted before us J. P. and D. L. esquires, two of his majesty's deputy lieutenants in and for the said county, for that he the said A. Q. having been duly chosen by lot to serve as a private militia man in the militia of the said county, and after due notice given unto him, hath neglected to appear and take the oath in that behalf required, and to serve in the said militia, and hath also neglected to provide any fit person to serve for him as his substitute; and whereas we the said deputy lieutenants have, upon as reasonable terms as might be, namely, for the sum of — provided and hired A. S. a fit person to serve in the said militia as the substitute of him the said A. Q. And whereas, on the — day of — in the year aforesaid, we did issue our warrant to the constable of — to levy the said sum of — by distress and sale of the goods and chattels of him the said A. Q. And whereas it duly appears to us, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said A. Q. as aforesaid, and that the goods and chattels of him the said A. Q. are not sufficient to answer the said distress: But nevertheless, it doth appear satisfactorily to us, that he the said A. Q. is of sufficient ability to pay the sum of ten pounds: These are therefore to command you the said constable of — aforesaid, to apprehend the body of the said A. Q. and him safely to convey to the common gaol at A. aforesaid, in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept. And we do hereby command you the said keeper of the said common gaol, to receive into your custody, in the same common gaol, the said A. Q. and him there safely to keep for the space of three months, or until he shall have paid the said sum of — agreed to be paid to such substitute as aforesaid, and for so doing this shall be your sufficient warrant. Given under

under our hands and seals the — day of — in the year of our Lord —.

G. Order to pay half the price of a volunteer to a balloted man when embodied.

Westmorland. { To the churchwardens and overseers of the poor of the township of — in the said county.

WHEREAS A. B. of your said township, weaver, hath before us — of his majesty's deputy lieutenants, [and — of his majesty's justices of the peace for the said county, if only one deputy lieutenant was present at such meeting,] been chosen by lot to serve in the militia of the said county, now embodied and in actual service; and hath been sworn and inrolled personally to serve, and hath served therein for the space of one month and upwards, and not been disapproved of and discharged by the commanding officer: [or, hath provided C. D. his substitute, who hath been sworn and inrolled to serve, and hath served therein for the space of one month and upwards, and not been disapproved of and discharged by the commanding officer:] And it doth appear upon the oath of the said A. B. that he is not possessed of an estate in lands, goods, or money of the clear value of 500 l. We do hereby order you to pay to the said A. B. the sum of — which we adjudge to be half the current price paid for a volunteer within the said county out of the rate made for volunteers within your said township, and if there be no volunteers provided by you in the said township, then out of a rate to be made after the manner of the poor rate, excepting out of the said rate all balloted persons who have served in the militia either by themselves or substitutes according to the directions of this or any other act, or are now serving in the said militia. Given under our hands the — day of — in the year of our Lord —.

Mill.

BY an ancient ordinance, *Haw. stat. V. 1. p. 181.* Toll for grinding. The toll of a mill shall be taken according to the custom of the land, and according to the strength of the water-course, either to the twentieth or four and twentieth corn,

And

And yet in some places the millers do claim and take the sixteenth part ; and where the custom hath been so used time out of mind, perhaps it may be good and warrantable. *Dalt. c. 112.*

And Mr. Dalton says, the miller ought to take but one quart for grinding of one bushel of hard corn, but if he fetch and carry back the grist to the owner, he may take two quarts of hard corn ; and this hard corn is intended of wheat, rye, messin (which is wheat and rye mixed). And for malt, the miller shall take but half so much toll as he taketh for hard corn, that is, one pint in the bushel, for that malt is more easily ground than wheat or rye : But if the miller do fetch to his mill, and carry back the malt to the owner's house, then the miller also shall have double toll. *id.*

But by *Holt Ch. J.* the toll of a mill must be regulated by custom ; and if the miller takes more than the custom warrants, it is extortion : But if it is a new mill, there the miller is not restrained to any certain toll ; but the persons who will have their corn ground there, must comply with the miller's demands ; and whatsoever he takes, it is not extortion, because it is the voluntary agreement of the parties. *L. Raym. 149.*

Tenants may be bound to grind at the lord's mill.

In some places, the tenants are bound to have their corn ground at the lord's mill. As in the case of *Hix and Gardener, H. 11 7.* In an action on the case for erecting a mill, the lord declared upon a custom for all the inhabitants to grind at his mill, and that the defendant had built a mill there contrary to the custom, and this was adjudged a good custom : And suit to a mill may be by reason of tenure or service, and also by custom, and so may well bind strangers. *2 Bulst. 195.*

And a new erected house within the precincts is within the custom of multure : And none may grind elsewhere, but in case of excessive toll, or that the grist cannot be ground at convenient time. *Hardr. 177.*

Miller changing corn.

T. 16 G. 2. K. and Wood. The defendant being a miller, was indicted for changing corn delivered to him to be ground, and giving bad corn instead of it. It was moved to quash it, because only a private cheat, and not of a publick nature. But it was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court was unanimous not to quash it. *1 Sess. Cas. 217.*

Or taking corn away with intent to steal it.

Although every larceny implies a trespass, and a felonious taking of the thing stolen ; yet it hath been resolved, that even those who have the possession of goods by the delivery

delivery of the party, as a miller who hath corn delivered to him to grind may be guilty of felony by taking away any part thereof with an intent to steal it. 1 Haw. 90.

Millers are not to be common buyers of any corn, to sell the same again, either in corn or meal; but ought only to serve for the grinding of corn that shall be brought to their mills. Dalt. c. 122.

Millers not to be buyers of corn.

By the 9 G. 3. c. 29. If any person or persons, unlawfully, riotously, and tumultuously assembled, to the disturbance of the publick peace, shall unlawfully and with force, demolish or pull down, or begin to demolish or pull down, any wind saw mill, or other wind mill, or any water mill, or other mill, or any of the works thereto belonging; every such person shall be guilty of felony without benefit of clergy. And if any person shall wilfully or maliciously burn or set fire to any such mill; he shall in like manner be guilty of felony without benefit of clergy. Prosecution to be commenced within eighteen months after the offence committed.

Demolishing mills.

Mines destroying.

BY the 10 G. 2. c. 32. If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal or cannel coal; he shall be guilty of felony without benefit of clergy.

Setting fire to mines.

And by the 13 G. 2. c. 21. If any person shall divert or convey any water into any coal work, with design to destroy or damage the same; he shall pay to the party grieved treble damages, with costs.

Conveying water to mines

And by the 9 G. 3. c. 29. If any person shall wilfully or maliciously set fire to, burn, demolish, pull down or otherwise destroy or damage any fire engine or other engine erected for draining water from collieries or coal mines, or for drawing coals out of the same; or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon way, or trunk, erected for conveying coals from any colliery or coal mine, or stait for depositing the same; or any bridge or waggon way erected for conveying lead, tin, copper, or other mineral from any such mine; or shall cause or procure the same to be done; he shall be guilty of felony, and transported for seven years.

Demolishing engines, &c.

Prosecution to
be in eighteen
months.

Mines destroying.

Provided, that no person shall be prosecuted on this act, unless the prosecution be commenced in 18 months after the offence committed.

Misadventure. See *Homicide*.

Misdemeanor.

THIS word in its usual acceptation is applied to all those crimes and offences for which the law has not provided a particular name; and they may be punished according to the degrees of the offence, by fine, or imprisonment, or both. *Barl.*

Misprision of felony. See *Felony*.

Misprision of treason. See *Treason*.

Mittimus. See *Commitment*.

Murder. See *Homicide*.

Mute.

HERETOFORE a person standing mute upon an arraignment of felony (that is, without speaking any thing at all, or without putting himself upon God and the country) was liable to a strange and cruel kind of punishment; the judgment in which case was, that the man or woman should be remanded to the prison, and laid there in some low and dark room, where they should lie naked on the bare earth, without any litter, rushes, or other cloathing, and without any garment about them, but something to cover their privy parts; and that they should lie upon their backs, their heads uncovered, and their feet, and one arm to be drawn to one quarter of the room with a cord, and the other arm to another quarter, and in the same manner to be done with their legs; and there should be laid upon their bodies iron and stone, so much as they might bear and more; and the next day following to have three morsels of barley bread without any drink, and the second day to drink thrice of the water next to the house of the prison (except running water) without any bread; and this to be their diet until they were dead. So as, upon the matter, they should die three

manner of ways, by weight, by famine, and by cold. And the reason of this terrible judgment was, because they refused to stand to the common law of the land. 2 Inst. 178, 179.

And this some persons endured, for the sake of their children or other kindred; because in such case they forfeited their goods only, and not their lands; for lands could not be forfeited but by attainder.

But now, by the 12 G. 3. c. 20. *If any person, being arraigned on any indictment or appeal for felony, or on any indictment for piracy, shall upon such arraignment stand mute, or will not answer directly to the felony or piracy, he shall be convicted of the offence, and the court shall thereupon award judgment and execution, in the same manner as if he had been convicted by verdict or confession; and such judgment shall have all the same consequences, as a conviction by verdict or confession.*

And the same law is, with respect to an arraignment for treason or petit larceny; for before this act, persons standing mute in either of these cases, were to have the like judgment as if they had confessed the indictment. 2 Inst. 177. 2 Haw. 329.

Naval stores. See **Stores**.

Navigable rivers. See **Rivers and Navigation**.

Nets. See **Game**.

News Papers.

BY 11 G. c. 8. For every journal, mercury, or other publick news papers, shall be paid a stamp duty of 1 d. a sheet, and $\frac{1}{2}$ d. for every half sheet. And by 30 G. 2. c. 19. for every news paper whether on a half sheet or less or more, and not exceeding one sheet, $\frac{1}{2}$ d. more: and $\frac{1}{2}$ d. more by the 16 G. 3. c. 34. and $\frac{1}{2}$ d. more by 29 G. 3. c. 50. *f. 1.*

Stamp duty on news papers.

And for every pamphlet contained in half a sheet of paper $\frac{1}{2}$ d. Larger than half a sheet, and not exceeding a whole sheet, for every printed copy thereof, 1 d. Above one sheet, and not exceeding six sheets in octavo, or a lesser page not exceeding 12 sheets in quarto or 20 sheets in folio, for every sheet which shall be contained in one printed copy thereof, 2 s. 10 Ann. c. 19. *f. 101.*

Duty on pamphlets.

Provided that nothing herein shall charge any act of parliament, .

parliament, proclamation, order of council, form of prayer, or other act of state, printed votes, school books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. *f.* 102.

Penalty.

And if any person shall write, print, or expose to sale any such pamphlet or news paper (the said pamphlet exceeding one sheet only excepted) before the paper shall be stamped; he shall forfeit 10 l. with full costs. *f.* 105.

Time limited
for stamping
pamphlets.

And a printed copy of every pamphlet containing more than one sheet, shall (within the bills of mortality) in five days after printing be brought to the head office, and the title, number of sheets, and duty shall be entred in a book, and the duty thereupon paid to the receiver general, who shall give a receipt for the same on such printed copy, on the same shall be stamped to denote the payment: Without the bills, it shall be brought in fourteen days to some head collector of the stamp duties, who shall enter the title, number of sheets, and duty; which duty shall be thereupon paid to the collector, who shall give a receipt for the same on such printed copy. *f.* 111.

Penalty.

And if any such pamphlet containing more than one sheet shall be printed or published, and the duty not paid, and title registered, and one copy stamped where required, so to be, within the time above limited; the author, printer, and publisher, and all other persons concerned, shall lose all property therein, and in every copy thereof, and shall also forfeit 20 l. with full costs. *f.* 112.

Selling pamphlets.

And no person shall expose to sale any such pamphlet, without the name and place of abode of some known person, by or for whom it was printed or published, written or printed thereon; on pain of 20 l. *f.* 113.

Pamphlets or
news papers un-
fold.

And pamphlets unfold shall be cancelled by the commissioners, and the like number of other sheets stamped gratis shall be changed for them. *f.* 114.

And instead of making allowances on the cancelling of news papers remaining unfold, as now used; there shall be an abatement made to every person who shall pay at one time for news paper stamps 10 l. or upwards, after the rate of 4 l. in the 100 l. 29 G. 3. c. 50. *f.* 7, 8.

Letting out news
papers for hire.

And no hawker of news papers, or other person, shall let out any news paper for hire, to any person, or to different persons, or from house to house; on pain of forfeiting 5 l. to be recovered and applied as other penalties relating to the stamp duties. *id.* *f.* 9.

Power of the
justices.

And two justices may hear and determine offences in relation to pamphlets or news papers; and mitigate the penalty, so as they do not reduce it lower than one fourth part,

part, over and above the costs: and where goods of the offender cannot be found, may commit him to prison till paid. 10 A. c. 19. f. 120.

And by the 16 G. 2. c. 26. If any person shall sell, or expose to sale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unstamped; any justice of the peace may commit him (being convicted before him by confession or oath of one witness) to the house of correction for any time not exceeding three months: And any person may apprehend and carry him before such justice; and on producing a certificate of such conviction, under the hand of such justice, shall have a reward of 20s. to be paid by the receiver general of the stamp duties. f. 5.

Selling pamphlets or news papers unstamped.

And for every advertisement in the gazette, or other printed paper, published weekly or oftner, shall be paid 1 s. by the 10 An. c. 19. and 1 s. more by the 30 G. 2. c. 19. and 6 d. more by the 20 G. 3. c. 28. and 6 d. more by 29 G. 3. c. 50. f. 1.

Duty on advertisements.

And for every advertisement contained in or published with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2 s. by 30 G. 2. c. 19: And 6 d. more by the 20 G. 3. c. 28. and 6 d. more by 29 G. 3. c. 50. f. 1.

But nothing herein shall extend to any single advertisement printed by itself.

Night Walkers. See *Surrey*.

Noblemen. See *Peers*.

Non compos. See *Lunatick*.

Non conformists. See *Dissenters*.

Northern borders.

BY the 43 El. c. 13. Forasmuch as many persons dwelling in Cumberland, Northumberland, Westmorland, and Duresme, have been taken by force and kept until ransomed; and whereas by reason of incursions, burnings, and robberies, several inhabitants there have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly called by the name of *Blackmail*, to divers men of name, friended and allied with divers in those parts, who are known to be great robbers and spoil takers in the said counties, to the end thereby to be by

Persons exacting Blackmail.

them freed, protected, and kept in safety; by reason whereof many are impoverished, and rapine much increased: It is therefore enacted, that whosoever shall without good authority take or detain any such persons against their wills to ransom them, or make a prey or spoil of their persons or goods, upon deadly feud, or otherwise; or shall be aiding therein; or whosoever shall take, receive, or carry any money, corn, cattle, or other consideration, commonly called *Blackmail*, for such protection; or shall burn any stack of corn; he shall, on conviction at the assizes or sessions, be guilty of felony without benefit of clergy. *f. 1, 2.*

Forasmuch as, &c.] At the time when this act was made, and for some time after, the peace of the borders was maintained by commissioners appointed by the two crowns respectively, who agreed upon certain articles to be observed by both sides; appointed guards and watches at certain fords and other places; kept courts; redressed grievances; punished offenders; and had power of life and death by way of legal trial in the manner of oyer and terminer. And this act was not made in abolition of such power, but in aid thereof, and for the punishment of certain offenders unto whom the commission of the lords wardens of the marches did not extend; which offenders, although not employed in the protection of the country by virtue of the institution of the wardenship of the marches, yet demanded contribution of the inhabitants under pretence of preserving them from rapine and depredation by reason of the friendship and alliance which they had with the spoil-takers and robbers in those parts.

Blackmail,
what.

Blackmail] *Muile* in *French* is a small piece of money; and in the 9 *H. 5.* silver halfpence here were termed *mailers*. In a large acceptation, the word *maile* signifies a rent in general, paid either in money, corn, cattle, or other goods, as *geese maile*, *cow maile*, and the like; and in *Scotland*, *maile* is still the common word for rent. *White maile*, white rents, (vulgarly called quit rents,) were rents paid in silver, and thereby distinguished from work day rents, cummin rents, corn rents, and the like. *Black maile*, or black rents, seem properly to have been rents paid in cattle (otherwise called *neat gelt*, or *neat geld*, from the Danish *gelt*, *geld*, *geldum*, a payment of tribute); but more largely taken, it seemeth to have been used to signify all rents not paid in silver, in contradistinction to the *red-ditus albi*, blanch farms, or white rents.

Dead

Deadly feud] *Feud* in the *German* signifies enmity, or war; as in like manner the word *foe* signifies any enemy. *Feud*, in *Scotland*, is a combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Deadly feud* is a profession of irreconcilable hatred, till a person is revenged even by the death of his adversary.

Deadly feud.

And, by the said statute, persons outlawed in any of the said counties for any such murder, robberies, burglaries, or other felonies, shall in two months be certified in writing by the clerk of the peace to all the sheriffs of all the said counties; and the said sheriffs shall proclaim them in *Carlisle*, *Penrith*, *Cockermouth*, *Appleby*, *Kendal*, *Newcastle*, *Morpeth*, *Alnewick*, *Hexham*, *Durresme*, *Darlington*, *Bishop Auckland*, *Barnard castle*, and *Berwick*, and once a month in every their county courts, till they surrender; and the mayors shall proclaim them in every fair, and every six weeks in the market; and persons relieving, or conferring with them, shall, on the like conviction, be imprisoned for six months, and bound to the good behaviour for a year. *f. 3, 4, 5, 6.*

The justices of *Northumberland* and *Cumberland* may make order in sessions, for charging the respective counties, for securing the same against the moss troopers (that is, thieves and robbers, who after having committed offences in the borders, do escape through the wastes and mosses); so as *Northumberland* be not charged above 500 l. nor *Cumberland* above 200 l. a year. And they may appoint a commander, with 30 men in *Northumberland*, and 12 men in *Cumberland*, to search for, pursue, and apprehend offenders. *13 & 14 C. 2. c. 22.*

Moss troopers.

And the persons so employed shall be chosen in sessions yearly, or every two years at the farthest. *29 & 30 C. 2. c. 2.*

Persons employed to apprehend moss troopers.

And the sessions shall take security of the persons by them employed for preservation of the borders, to answer the damages sustained by their neglect or default, and to pay the same in four months after proof made thereof in sessions by oath of one witness; so as the goods stolen or entered in one of the books to be kept for that purpose, in forty-eight hours after they be stolen or gone; and books shall be kept for that end in every market town in the said counties, and in such other places, and by such persons as the sessions shall appoint. *29 & 30 C. 2. c. 2.*

To give security.

And by the *18 C. 2. c. 3.* Great and notorious thieves and spoil-takers, in the said counties of *Northumberland* and *Cumberland*, shall suffer death as felons without benefit of clergy;

Notorious thieves and spoil takers.

Offenders escap-
ing out of one
Kingdom into
the other.

clergy; or may be transported by order of the judges of assize, during life.

By the 13 G. 3. c. 31. If any person against whom a warrant shall be issued by any justice in *England*, for any offence against the laws of *England*, shall escape or go into *Scotland*; the sheriff, or steward depute, or substitute, or any justice of the county or place where such person shall be, may indorse his name on the said warrant: which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all sheriffs officers, stewards officers, constables, and other peace officers where such warrant shall be so indorsed, to execute the same in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him into the county or place in *England* (being adjacent to *Scotland*) in which the offence was committed, before a justice of such county or place, to be there dealt with according to law: Or, in case the offence was committed in the county not next adjacent to *Scotland*, then to convey him into any county of *England* adjacent to *Scotland*, before a justice there; who shall proceed, with regard to such person, by indorsing the warrant, as by the 24 G. 2. c. 55. in like manner as if the person had been apprehended in the said county. *f. 1.*

And if any person, against whom a warrant shall be issued by the lord justice general, lord justice clerk, or any of the lords commissioners of judicary, or by any sheriff, or steward depute, or substitute, or justice of the peace of *Scotland*, for any offence against the laws of *Scotland*, shall escape or go into *England*, any justice of the county or place where such person shall be, may indorse his name on the said warrant: Which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all constables or other peace officers where such warrant shall be so indorsed, to execute the same in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him into the county or place in *Scotland* (being adjacent to *England*) where the offence was committed, before the sheriff or steward depute, or substitute, or a justice of such county or place, to be there dealt with according to law: Or, in case the offence was committed in a county not next adjacent to *England*, then to convey him into any county of *Scotland* adjacent to *England*, before the sheriff, or steward depute, or substitute, or a justice there;

there; who shall proceed, with regard to such person, according to the rules and practice of the law of *Scotland*, in like manner as if he had been apprehended in the said county. *f. 2.*

And the expence of removing prisoners as aforesaid shall be repaid to the person defraying the same, by the treasurer of the county in *England*; or by the sheriff, or steward depute, or substitute, of the county in *Scotland*, in which the offence was committed; the amount of such expence being previously ascertained upon oath before two justices of such county, and allowed and signed by them. *f. 3.*

Expences of removing prisoners.

And if any person, having feloniously taken money, cattle, goods, or other effects, in either part of the united kingdom, shall afterwards have the same or any part thereof in his possession in the other part of the united kingdom; it shall be lawful to indict, try, and punish him for theft or larceny in that part of the united kingdom, where he shall so have such money, cattle, goods, or other effects in his possession, as if the same had been stolen there. *f. 4.*

Offenders removing their booty.

And if any person, in either part of the united kingdom, shall knowingly receive or have any money, cattle, goods, or other effects, stolen, or otherwise feloniously taken in the other part of the united kingdom; he shall be liable to be indicted, tried, and punished for the same, in that part of the united kingdom where he shall so receive or have the same, as if they had been originally stolen there. *f. 5.*

Persons receiving such booty.

Nuisance.

- I. What it is.
- II. How it may be removed.
- III. How punished.

I. What it is.

A Common nuisance seems to be, an offence against the publick, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. *1 Haw.*

Common nuisance.

197.
Annoyances to the prejudice of particular persons, are not punishable by a public prosecution as common nuisances, but are left to be redressed by the private actions of the parties aggrieved by them. *id.*

Where

Difference between a private and publick nuisance.

Where note a diversity between a *private* and a *publick* nuisance: If it is a *private* nuisance, he shall have his action upon his case, and recover his damages; but if it is a *publick* nuisance, he shall not have an action upon his case, and this the law hath provided for avoiding of multiplicity of suits, for if any one might have an action, all men might have the like; but the law for this common nuisance hath provided an apt remedy, by presentment or indictment at the suit of the king, in the behalf of all his subjects; unless any man hath a particular damage, as if he and his horse fall into a ditch made across a highway, whereby he received hurt and loss, there for his special damage which is not common to others, he shall have an action upon his case. 1 *Inst.* 56.

And from hence it clearly follows, that no indictment for a nuisance can be good, which lays it to the damage of private persons only: as where it accuses a man of surcharging such a common; or of inclosing such a piece of ground, wherein the inhabitants of such a town have a right of common, to the nuisance of all the inhabitants of such a town; or of disturbing a watercourse running to such a mill, to the damage of such a person and his tenants, without saying of *all the liege subjects of the king.* 1 *Haw.* 197.

Yet it hath been said, that an indictment of a *common scold* is good, although it conclude to the common nuisance of *divers*, instead of *all*, the king's subjects; perhaps for this reason (says Mr. *Hawkins*), because a common scold cannot but be a common nuisance. 1 *Haw.* 198.

And if the law be so in this case, why should not an indictment setting forth a nuisance to a way, and expressly and unexceptionably shewing it to be a highway, be good, notwithstanding it conclude to the nuisance of *divers*, without saying *all*, the king's subjects? And perhaps the authorities which seem to contradict this opinion, might go upon this reason, that in the body of the indictment, it did not appear with sufficient certainty, whether the way, wherein the nuisance was alledged, were a highway, or only a private way; and therefore that it shall be intended from the conclusion of the indictment, that it was a private way. *id.*

There is no doubt but that common *bawdy houses* are indictable as common nuisances: and it hath been said, that all common *stages for rope dancers*, and also all common *gaming houses*, are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because

Bawdy houses,
gaming houses,
and stages for
rope dancers.

cause they are apt to draw great numbers of disorderly persons. *id.*

Also it hath been holden, that a common *playhouse* may be a nuisance, if it draw together such a number of coaches or people, as prove generally inconvenient to the places adjacent. *id.*

Playhouses.

Stopping a *prospect* is not a common nuisance. 3 *Salk.* 247.

Stopping a prospect, or lights.

Erecting a shed so near a man's house, that it stops up his *lights*, is not a nuisance for which an action will lie; unless the house is an ancient house, and the lights ancient lights. 2 *Salk.* 459.

So if two men be owners of two parcels of land adjoining, and one of them doth build an house upon his land, and makes windows and lights looking into the other's land, and this house and the lights have continued by the space of 30 or 40 years; yet the other may, upon his own land and soil, lawfully erect an house or other thing, against the said lights and windows, and the other can have no action; for it was his folly to build his house so near to the other's land. But if the former hath continued for time immemorial, it is otherwise. *Cro. Eliz.* 118.

A gate erected in a highway, where none had been before, is a common nuisance. 1 *Haw.* 199.

Erecting a gate.

It hath been holden, that it is no common nuisance to make *candles* in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because whatever necessity there may be that candles be made, it cannot be pretended to be necessary to make them in a town: and surely the trade of a *brewer* is as necessary as that of a chandler; and yet it seems to be agreed, that a brewhouse erected in such an inconvenient place, wherein the business cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuisance: And so in like case may a *glass-house*, or a *swine yard*. *id.*

Brewhouse, glass-house, hogsty, or tallow-chandler's shop.

Two persons were indicted for making great quantities of *noisome, offensive, and stinking liquors*, called acid spirit of sulphur, oil of vitriol, and oil of aqua fortis; whereby the air was impregnated with noisome and offensive smells: And it was held by the court to be a nuisance. The word *noisome* comes in the place of the Latin *noxius*; and means not only disagreeable, but hurtful. And lord Mansfield said, it is not necessary, to constitute the offence, that the smell should be *unwholesome*; it is enough, if it renders the enjoyment of life and property *uncomfortable*.

Making offensive liquors.

able.

able. Burrow. Mansfield. 333. Rex v. White and Ward. E. 30 G. 2.

Making great
noises in the
night.

A person was indicted for making great noises in the night with a *speaking trumpet*, to the disturbance of the neighbourhood; and it was held by the court to be a nuisance. *T. 12 G. K. and Smith. Str. 704.*

A dove-cote.

But it hath been resolved, that neither an old, nor a new *dove cote* is a common nuisance; but perhaps if a tenant hath erected one without licence of the lord of the manor, the lord may have an action on his case against him. *1 Haw. 198.*

A monster.

A *monster* shewn for money is a misdemeanor. *2 Cha. Ca. 110. T. 34 C. 2. Harring and Walrond.* It was a monstrous child, that died, and was embalmed to be kept for shew: but was ordered by the lord chancellor to be buried.

A dog that kills
sheep.

If a man has a *dog* that kills sheep, that is not a publick nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing; And in an action upon the case for such killing, the plaintiff shall be required to prove in evidence, that the dog had used to kill sheep. *Dyer, 25. Het. 171.*

An unruly horse.

If a man has an unruly *horse* in his stable, and leaves open the stable door, whereby the horse gets forth and doth mischief, an action lies against the master. *1 Vent. 295.*

A bull.

In the case of *Buxendin and Sharp, E. 8 W.* The plaintiff declared, that the defendant kept a *bull*, that used to run at men, but did not say that the defendant knew of this quality; it was adjudged, that an action did not lie, unless it did appear that the master knew of this quality. *2 Salk. 662.*

Beasts feræ na-
turæ.

There is a difference between beasts that are *feræ naturæ*, as lions and tygers, which a man must always keep up at his peril; and beasts that are *mansuetæ naturæ*, and break through the tameness of their nature, such as oxen and horses. In the latter case, an action lies, if the owner has had notice of the quality of the beast; but in the former case, an action lies without such notice. *Ld. Raym. 1583.*

But after such wild beasts have escaped from their keeper, so as to regain their natural liberty, in such case, he that kept them before, shall not answer for the damage they shall commit after he hath lost them, and they have resumed their wild nature. *1 Vent. 295.*

A mas-

A *maffiff*, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large.

A *maffiff*.

II. How it may be removed.

It seemeth to be certain, that any one may pull down or otherwise destroy a common nuisance, as a new gate, or even a new house erected in a highway, or the like: for if one whose estate is or may be prejudiced by a *private* nuisance actually erected, as a house hanging over his ground, or stopping his lights, may justify the entering into another's ground and pulling down and destroying such a nuisance, whether it were erected before or since he came to the estate, it cannot but follow *a fortiori*, that any one may lawfully destroy a *common* nuisance: And as the law is now holden, it seems that in a plea, justifying the removal of the nuisance, a man need not shew that he did as little damage as might be. 1 *Haw.* 199.

Any person may remove a nuisance.

But although he may remove the nuisance, yet he cannot remove the materials, or convert them to his own use. *Dalt. c. 50.*

But so much of the thing only as causes the nuisance ought to be removed: As if a house be built too high, only so much of it as is too high should be pulled down. 9 *Co.* 53. *Godb.* 221.

And in the case of a *glass-house*, the judgment was to abate the nuisance; but not by pulling the house down, but only to prevent its being again used as such. *Co. Ent.* 92.

III. How punished.

It is said that a common scold is punishable (after conviction, upon indictment) by being placed in a certain engine of correction called the trebucket or cucking stool. 1 *Haw.* 200.

Punishment by cucking stool.

Note; *cuck* or *guck* in the *Saxon* tongue (according to lord Coke) signifieth to scold or brawl; taken from the bird *cuckoo* or *guckbaw*: and *ing* in that language signifieth water; because a scolding woman was for her punishment souled in the water. 3 *Inst.* 219. The common people in the northern parts of *England*, amongst whom the greatest remains of the ancient *Saxon* are to be found, pronounce it *ducking stool*; which perhaps may have sprung

Nusance.

sprung from the *Belgick* or *Teutonick ducken*, to dive under water; from whence also probably we denominate our *duck* the water fowl: or rather, it is more agreeable to the analogy and progression of languages, to assert, that the substantive *duck* is the original, and the verb made from thence; as much as to say that to *duck* is to do as that fowl does.

And she may be convicted, without setting forth the particulars in the indictment. 2 *Haw.* 227.

Nevertheless, the offence must be set forth with convenient certainty; and the indictment must conclude not only *against the peace*, but *to the common nusance of divers of his majesty's liege subjects*. And in the case of *K. and Margaret Cooper*, *H. 19 G. 2.* She was convicted on an indictment, *for being a common and turbulent brawler, and fower of discord amongst her quiet and honest neighbours, so that she hath stirred, moved, and incited divers strifes, controuersies, quarrels, and disputes, amongst his majesty's liege people, against the peace, &c.* It was moved in arrest of judgment, that the charge was too general, and did not amount to being either a barrator or common scold, which are the only instances in which a general charge will be sufficient. It was likewise objected, that if the words did amount to a description of a scold, yet it should be laid to be to the common nusance of her neighbours, for every degree of scolding is not indictable. And the court was of opinion, that the judgment ought to be arrested on both exceptions; for none of the words here used are the technical words; and it must be laid to be to the common nusance. *Str.* 1246*.

Punishment by
fine and imprisonment, and to
remove the nusance.

There is no doubt, but that whoever is convicted of nusance, may be fined and imprisoned; and it is said, that one convicted of a nusance done to the king's highway, may be commanded by the judgment to remove the nusance at his own costs: and it seemeth to be reasonable, that those who are convicted of any other common nusance, should also have the like judgment. 1 *Haw.* 200. *Str.* 886.

* It seemeth to favour not much of gallantry that our ancestors supposed none but women could be guilty of this offence; for the technical words denoting the same, whilst the proceedings were in Latin, were all of the feminine gender; as *rixatrix*, *calumniatrix*, *communis pugnatrice*, *communis pacis perturbatrix*, and the like.

And

And the defendant shall not be allowed to make any objections against the indictment, until he hath pleaded to it. *Dalt. c. 66.*

And the court never admits a person convicted of a nuisance, to a small fine, until proof is made of the nuisance being removed. *id.*

A master is indictable for a nuisance done by his servant. *Ld. Raym. 264.*

All common nuisances are indictable not only at the sessions, but also in the torn and leet. *2 Haw. 67.*

An act of general pardon only discharges the fine, but not the abatement of the nuisance. *2 Salk. 458.*

There are many offences by particular statutes declared to be common nuisances, which are treated of under their respective titles.

General indictment for a nuisance.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county of ——— yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and on divers other days and times, as well before as afterwards, with force and arms at ——— in the said county, [here set forth the nuisance ;] and the same (nuisance) so as aforesaid done doth yet continue and suffer to remain ; to the common nuisance of all the lieges and subjects of our said lord the king, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Oaths.

- I. Of oaths in general.
- II. The common forms of oaths.
- III. Quakers oaths.
- IV. Oaths of infidels.

I. Of oaths in general.

OATH is a corruption of the Saxon word *eoth*. *3 Inst. Oath.*
165.

It is called a corporal oath, because the person lays his hand upon some part of the scriptures when he takes it. *id.* Corporal oath.

If

Oath taken on
the common
prayer book.

If the oath be taken on the common prayer book, which hath the epistles and gospels, it is good enough, and perjury upon the statute may be assigned upon this oath. 2 *Keb.* 314.

So help me God.

The words, *So help me God*, in the common form of an oath, perhaps may have been first used in the very ancient manner of trial by battel in this kingdom, or at least are delivered with a peculiar emphasis in that solemnity; wherein the appellee lays his right hand on the book, and with his left hand takes the appellant by right, and swears to this effect, *Hear this, thou who callest thyself John by the name of baptism, whom I hold by the hand, that falsely upon me thou hast lied; and for this thou liest, that I who call myself Thomas by the name of baptism, did not feloniously murder thy father W. by name.*—*So help me God;*—(and then he kisses the book, and says) *and this I will defend against thee by my body, as this court shall award.* And so the appellant is sworn in like manner.

[Where we may observe also the genuine foundation, as it seemeth, of the word *lie* being esteemed still so great an affront above all others, as whenever it is pronounced, to cause an immediate affray and bloodshed.]

Power of administering an oath.

There hath been much doubt, how far justices of the peace have power to administer an oath. The statute of the 15 G. 3. c. 39. hath in one instance ascertained and declared their power; by which it is enacted as follows: *Whereas it is frequently necessary for justices of the peace to administer oaths, where penalties are to be levied, or distresses to be made, in pursuance of acts of parliament, which they have no power to administer, unless authorized so to do by such acts respectively; it is therefore enacted, that in all cases, where any penalty is directed to be levied, or distress to be made, by any act of parliament now in force, or hereafter to be made, it shall be lawful for any justice or justices, acting under the authority of such acts respectively, to administer an oath or oaths for the purpose of levying such penalties or making such distresses.*

But except in the particular instances here specified, the matter remains as doubtful as it was before, or perhaps more doubtful, as it may induce an inquiry into other branches of the office of a justice of the peace, which possibly may be liable to the same objection.

And there seems to be some ambiguity upon the face of the act itself. For there are three different forms of expression in acts of parliament giving power to justices to levy penalties and make distresses: One is, where an act says generally, that such an offence shall be heard and de-

terminated by one or more justices, without expressing the particular mode of conviction: The second is, where an act says, that the conviction shall be upon the oath of one or more witness or witnesses: And the third is, where the act goes further and says—*which oath such justice is hereby impowered to administer.*

If it is the last of these only that the act refers to, it is certain there are numberless instances where convictions are required by acts of parliament to be made on the oaths of witnesses, which acts give no express power to the justices to administer such oaths; and if upon the said acts no oath, before this remedial act, could be administered, they must necessarily be understood as having been hitherto nugatory, and the convictions thereupon merely void. The famous game act of the 5 Ann. c. 14. and many other game acts consequent thereupon, require the conviction to be upon oath, but do not expressly authorize the justices to administer the said oath. So also, many penalties relating to the poor; to the woollen, linen, fustian, cotton, leather, iron, and other manufactures; to the wages of servants, labourers, and artificers; and even in the late dog act, where the penalties are very large; and on a yet later act, 13 G. 3. c. 63. relating to the silk manufacture, where some of the penalties are not less than 50l., are directed to be recovered by the oaths of witnesses, and yet the justices are not impowered by any of the acts respectively to administer the said oaths.

But be this as it may, it is evident that this remedial act doth not extend to any case where an oath is not mentioned in the act, but where only a general power is given to the justices to take cognizance; and it may be argued, that if where an oath is necessary, yet the justices cannot proceed, unless authorised by the several acts respectively to administer such oath, it follows *a fortiori*, that where no oath is mentioned, there no oath can be by them administered. And this is the case of all the ancient statutes, so far down as the latter end of the reign of queen Elizabeth. For they only express in general, that the justices shall have power to *bear and determine*—shall *inquire* of such and such offences—shall *inquire, hear and determine, by their discretions*—shall *convict offenders by witness, confession, or otherwise*. The statute of the 43 El. c. 7. against hedge breaking and robbing of orchards, is the first statute that specially requires the conviction to be upon oath: And in many subsequent statutes, it is only expressed that the conviction shall be before the justices, without any mention of an oath at all.

Besides, there are many other acts to be done by justices of the peace, which have no relation to levying of penalties or making distresses: And it may be argued from analogy, that if they have not power to administer an oath in one case, they have not power to administer it in another under the like circumstances. As for instance: Sometimes the penalty, after conviction, is not pecuniary, to be levied by distress; but corporal, by commitment to the house of correction, or otherwise; and yet the acts, authorizing and directing the proceedings, run in the very same style and form of words, only this act of the 15 G. 3. c. 39. heals the defect in one case, but leaves the matter open as to the rest, and unless the circumstances can be distinguished, may affect the office of a justice of the peace in a most essential and vital part; for to convict, and in consequence thereof to imprison an offender, without oath, or (which is the same thing) by virtue of an oath which the justice hath no power to administer, argues a very feeble and imperfect jurisdiction, and such as no one without being well advised, would readily chuse to exercise.

Indeed, very few of the oaths administered by justices of the peace have the aforesaid sanction of a special authority given by the several acts to support them. No act of parliament gives a special power to administer the oath of office to a gager in the excise, a commissioner of sewers, or a sheriff's bailiff; to a soldier enlisted in his majesty's forces; to an out-pensioner of *Chelsea* hospital, in order to receive his pension; to a pauper wanting relief; to a person apprehended as a rogue and vagabond; to a landlord on the tenant's conveying away his goods clandestinely; to a person robbed, in order to bring his action against the hundred: All these, and many other such like, are directed to be administered by the respective acts of parliament, which acts nevertheless have no clause authorizing the justices to administer the said oaths. Nay further than this, in matters of daily practice, so far from an additional clause authorizing the administering of an oath, there is no act of parliament now existing, that requires the justices to take any examination upon oath either on the removal of a pauper to his settlement, or the filiation of a bastard child before the two next justices. So that the oaths, which upon those occasions are administered, are only of congruity, as supposed incident to and necessarily annexed to the office of a justice of the peace; and if they cannot be supported upon that foundation

tion, it is easy to conjecture what must be the consequence.

It may be worth while, in a few words, to consider, what hath been advanced by learned men upon this subject. It hath been urged, that the very act of parliament which gives power to the justices to hear and determine, and the commission of the peace consequent thereupon, do, without more, give to the justices every thing necessary for the execution of that power; according to that saying of *Lo. Coke* upon another occasion, that when the law granteth any thing, that also is granted, without which the thing itself cannot be. And so it seems to have been understood for upwards of two hundred years; for from the first institution of the office, to the latter end of the reign of queen *Elizabeth* (as I observed before), the special mode of conviction by oath is never mentioned. But then it is to be remarked, that during all that period, the justices were considered as acting in their sessions, by a jury; in like manner and form of proceeding, as in other the king's courts of record. And it was not until smaller matters, such as hedge breaking, servants wages, frequenting alehouses, and such like, were brought under the jurisdiction of justices of the peace, that the administering of an oath became specially directed. These lesser matters were thought too trifling to bring the country together about them; and therefore it was ordained, that they shall be heard and determined by one or more justices out of sessions, and without a jury. And hereby a new kind of judicature being established, it became necessary to limit and define the particular mode of proceedings; as that the justice should have power to convict by *confession of the party*, by *view of the justice*, or by *examination of witnesses*, which examination at that time, no doubt, was understood to be upon oath, for they knew of no other judicial examination. But for the greater precision, and to prevent any shadow of ambiguity, very many statutes giving this summary jurisdiction in particular cases, where an oath is required, have this additional clause—*which oath such justice is hereby impowered to administer*. Nevertheless, there are so many statutes of the like kind which do not observe this distinction, and others which never mention any oath at all, that it seemeth difficult upon these premises to form any general conclusion. What hath been principally intended seems to have been, to specify that the conviction in such cases shall be in a summary manner without the help of a jury, and consequently that the justice in that respect is constituted in the place both of judge and jury,

and as such must proceed after the course of the common law, when not directed otherwise by special words in the act of parliament.

On the other hand, the authority of *Ld. Coke* is alledged in this matter against such general power; who, in treating of the oath of office to be taken, in pursuance of the statute of the 13 *Ed. 1. fl. 1. c. 47.* by the conservators of the Humber, Ouse, Trent, and other rivers, in relation to the taking of salmon, says, a new oath cannot be imposed upon any judge, commissioner, or any other subject, without authority of parliament, as here it was; but the giving of every oath must be warranted by act of parliament, or by the common law time out of mind. 2 *Inst.* 479.—But this doth not contradict the former position, but rather confirms it, admitting the common law as a rule for the giving of oaths.

The act of parliament of the 1 & 2 *P. & M. c. 13.* empowering the justices out of sessions to take bail of persons arrested for felony, prescribes that the justices shall *take the examination of the prisoner, and the information of them that bring him*, but doth not express that the information shall be upon oath. Upon which, *Mr. Lambard* observes as follows: Because (says he) some justices do use to take this information of the bringers upon their oaths, and some others do receive it without any oath at all, let us see what is wont to be said on either side, that every man may the better understand what way to incline and follow. They which take this information without any oath say, that if the makers of this statute had meant that an oath should be taken, then would they have expressed so much; even as the statutes for bankrupts, 34 *H. 8. c. 4.* and 13 *El. c. 7.* the statute of accountants, 5 *R. 2. c. 13.* the statute of labourers, 2 *H. 5. c. 4.* and the statute of choosing knights of the parliament, 8 *H. 6. c. 7.* have done before: In all which, and some other statutes, examination upon oath is given by express and plain words. But they on the contrary side do strongly defend their exacting an oath, by the example of the justices of the higher courts; and do alledge, that whereas the statute of the 5 *H. 4. c. 48.* did ordain, without any mention of an oath, that in action of debt upon the arrearages of an account, the justices should have power to examine the attornies and others, the justices of the bench do use in that case to minister an oath to the persons examined. Thelike, they say, is daily done and practised in all the examinations of summoners, viewers, sheriffs, clerks, and other officers, that do happen in the higher courts at *Westminster*

minister; and Mr. *Brooke* (tit. Examination, 32.) is of opinion, that every examination is to be handled upon oath. And therefore belike (say they) the statute of 2 Ed. 6. c. 13. giving power to the ordinary to examine a man for his personal tithe, excepteth an oath, as though otherwise he might have required it of him. Besides all this, they add for reason, that if these informers be examined on oath, then, although it should happen them to die before the prisoner hath his trial, yet may their information be given in evidence, as a matter of good credit; whereas otherwise, it would be of little or no weight at all, and thereby offenders should the more easily escape. And, he adds, to this latter opinion, I myself am ready to subscribe; as well because I have heard some judges of assize deliver their minds accordingly, as also for that I have found by experience, that, without such an oath, many informers will speak coldly against a felon before the face of the judge, having perhaps first made their bargain with the offender or his friends, before that the judge did hear of the cause. *Lamb. 213.*

Mr. *Dalton*, upon the same subject, says, the person accused shall not be examined upon oath, for by the common law no man is obliged to accuse himself. But it seemeth convenient (he says), in cases of felony especially, that the information of the bringer and others, which the justices do take against the prisoner, be upon oath; otherwise, upon the trial of the prisoner, such information taken by the justice shall not be read or delivered to the jury, nor given in evidence against the prisoner upon his trial. And so was the direction of the *Ld. C. J. Coke* at *Cambridge* summer assizes, upon the trial of a felon; for, said he, in case of a trespass, although it be only to the value of twopence, no evidence shall be given to the jury but upon oath, much less where the life of a man is in question. *Dalt. Old Ed. c. 111.*

And *Ld. Hale*, speaking of the same statute, is express, that the information of the prosecutor or witnesses ought to be upon oath, although the statute doth not mention an oath; which information upon oath, being sworn on the trial to be truly taken by the justice or his clerk, may be given in evidence against the prisoner, if the witnesses be dead or not able to travel. *1 H. H. 586.*

Finally, Mr. *Dalton*, in another place, speaking of the case where one justice may punish offenders upon accusation or proof generally, says, it seemeth that this must be by examination of witnesses; and though the statute doth not expressly set down that it shall be upon oath, yet it

seemeth fit, that the justice do it upon oath: yea in all other cases, wheresoever any man is authorised to examine witnesses, such authority to examine shall be taken and construed to be in such manner as the law will, which is only by oath. *Dalt.* (Old Ed. c. 66.

Upon the whole, this difference of opinion, concerning the power of justices of the peace to administer oaths in the several cases that may happen, is a matter of most serious consideration; and there being by the aforesaid act of 15 G. 3. c. 39. a parliamentary declaration in one instance, which, so far as it goes, determines against a general power of the justices; and it being uncertain how far by parity of reason the like construction may be extended to other instances; it is humbly submitted, whether it might not be expedient to enact once for all, that in all cases where by any act of parliament justices of the peace have cognizance, they shall have power to administer an oath.

Perjury.

Where an oath is administered by a person that has lawful authority to tender the same, and it be afterwards broken, yet if it be not in a judicial proceeding, it is not perjury, nor punishable by the common law. 3 *Inst.* 166.

Therefore if one call another a *perjured* man, he may have an action on the case, because it shall be intended to be contrary to his oath in a judicial proceeding; but for calling one a *forsworn* man, no action lies; because the forswearing may be extrajudicial, and consequently no perjury in law. *id.*

Of the oath of allegiance.

Every layman, above the age of 12 years, was anciently obliged to take the oath of allegiance at the tourn or leet; and it was a high contempt to refuse it. 1 *Inst.* 68.

But the clergy were not obliged to take the oath of allegiance till the reformation, any further than doing homage to the king for the lands held of him in right of the church. 1 *H. H.* 71, 72.

Ld. Hale, speaking of the ancient oath of allegiance which continued above 600 years, says, that therein the prudence of the common law is observable, that it was short and plain, not intangled with long and intricate clauses or declarations, but that the sense of it was obvious to the most common understanding, and yet withal comprehensive of the whole duty of a subject to his prince. 1 *H. H.* 63. And from this the present form of the oath of allegiance hath not much varied.

Of the oath of supremacy.

The oath of supremacy came in, upon abolishing the papal authority at the reformation.

The oath of abjuration came in after the revolution; received some alterations in the first year of queen *Anne*; and again in the first year of king *George* the first; and finally in the sixth year of king *George* the third.

Of the oath of
abjuration.

Perhaps it might be wished, that it were made more applicable to *Lord Hale's* rule, in being more short and plain; there being in it several hard words, which probably many who take it do not well understand; and there being an act of parliament therein referred to, which perhaps not one in fifty who take it have consulted.

Two justices may summon by writing under hand and seal, any person whom they shall suspect to be dangerous or disaffected to the government, to appear before them, at a certain day and time therein to be appointed, to take the oaths of allegiance, supremacy, and abjuration, and if such person neglects or refuses to appear, then on due proof made on oath of the summons having been served on such person, or left at his dwelling-house, or usual place of abode, with one of the family there, they shall certify the same to the next sessions, there to be recorded by the clerk of the peace. And if such person shall neglect or refuse to appear and take the oaths at the said sessions (the name of such person being publickly read at the first meeting of the said sessions), then such person shall be esteemed and adjudged a popish recusant convict; and the same shall be thence certified by the clerk of the peace into the chancery or king's bench, to be there recorded. 1 G. 2. c. 13. s. 10, 11.

Summoning
persons to take
the oaths.

Whom they shall suspect] It seemeth that a bare suspicion is not sufficient, but there should be some good cause of suspicion, and that the cause of suspicion is traversable.

Read. Oath.

Refuse—to take the oaths] A person cannot be said to *refuse* the oaths, unless they be read to him, or offered to be read. *Read. Oath.*

II. The common forms of oaths.

The oath of allegiance, by the 1 G. 2. c. 13.

Oath of alle-
giance.

I A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George: So help me God.

The oath of supremacy, by the 1 G. 2. c. 13.

Oath of supre-
macy.

I A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or

Oaths.

murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm: So help me God.

Oath of abjuration.

The oath of abjuration, by the 6 G. 3. c. 53.

I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be, and took upon himself the style and title of king of England, by the name of James the third, or of Scotland by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging: And I do renounce, refuse, and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty king George and him will defend, to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traitorous conspiracies which shall know to be against him or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against the descendants of the said James, and against all other persons whatsoever which succession, by an act, intituled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands limited to the princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to the express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly and truly, upon the true faith of a christian: So help me God.

Declaration against transubstantiation.

The declaration against transubstantiation, by the 2 C. 2. c. 2. s. 9.

I A. B. do declare, that I do believe, that there is not any transubstantiation in the sacrament of the Lord's supper or in

the elements of bread and wine, at or after the consecration thereof by any person whatsoever.

The declaration against popery, by the 30 C. 2. *§. 2.* Declaration
against popery.
c. 1.

I A. B. do solemnly and sincerely, in the presence of God, profess, testify, and declare, that I do believe, that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever: And that the invocation, or adoration of the Virgin Mary, or any other saint, and the sacrifice of the mass, as they are now used in the church of Rome, are superstitious and idolatrous: And I do solemnly, in the presence of God, profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the pope, or any other authority or person whatsoever, and without any hope of any such dispensation from any person or authority whatsoever, or without thinking that I am or can be acquitted before God or man, or absolved of this declaration, or any part thereof, although the pope, or any other person or persons, or power whatsoever, shall dispense with or annul the same, or declare that it was null or void from the beginning.

III. Quakers oaths.

In all cases wherein by any act of parliament an oath shall be allowed or required, the solemn affirmation of Quakers shall be allowed instead of such oath; and that, although no express provision be made for that purpose in such act. 22 G. 2. *c. 46.* And therefore such provisions, which are very frequent in acts of parliament, are superfluous.

Affirmation allowed.

And if any person shall be lawfully convicted of wilful, false, and corrupt affirming or declaring any matter or thing, which if sworn in the usual form would have amounted to wilful and corrupt perjury, he shall suffer as in cases of perjury. 8 G. *c. 6. §. 2.*

Perjury incurred by false affirmation.

But no quaker shall by virtue hereof be qualified or permitted to give evidence in any criminal cause, or serve on any juries, or bear any office or place of profit in the government. 7 & 8 W. *c. 34. §. 6.*

Affirmation not allowed in criminal matters.

In any criminal cause] By which words it seemeth, that a quaker shall not have sureties of the peace or good behaviour granted to him, or have a warrant to search for stolen goods, or sue the hundred for damages in case of robbery, and

What shall be deemed criminal matters.

and the like, upon his bare affirmation; but that in all such cases, an oath is first necessary to be made.

Thus, *T. 4 G. 2. K. and Wych.* It was denied to read a quaker's affirmation, on a motion for an *information* for a misdemeanor. *Str. 872.*

T. 7 G. Robins and Sayward. By the court, We cannot ground an *attachment* for non-performance of an award, on the affirmation of a quaker; for though it be in a suit between party and party, yet it is a criminal prosecution within the proviso of the statute. *Str. 441.*

H. 3 G. 2. Cassel, widow, against Bainbridge and Corbet. In an *appeal* of murder, a quaker was called for a witness, and it was insisted that this is a civil suit between party and party, and not between the king and the party, and therefore his affirmation ought to be taken. But *Raymond Ch. J.* said, it was to this purpose a criminal proceeding, and therefore he could not be a witness. *Str. 856.*

H. 8 G. 3. K. and Gardner. The affirmation of a quaker was offered, in exculpation of Mr. Gardner the defendant, upon shewing cause why an information should not be exhibited against Mr. Gardner for a misdemeanor. The reading of this affirmation was objected to. And the court held clearly, 1. That a quaker's affirmation could not be read in support of a criminal charge. But, 2. They thought that an affirmation might be read in defence of a criminal charge, if the person charged was himself a quaker, in order to exculpate himself. 3. In this case of a collateral evidence, in assistance of the exculpation of another person, when the quaker himself was not charged at all, they thought his affirmation ought not to be read. And accordingly it was withdrawn. *Burr. Mansf. 1117.*

H. 16 G. 3. Atcheson and Everit. On an action of debt on the statute against bribery, a quaker's affirmation was objected against, because bribery is a criminal offence, subjecting the offender not only to the penalty inflicted by the statute, but also punishable as an offence at common law. But by the court, In all cases, where an action and an indictment both lie for the same act, as in assault, imprisonment, and the like, a quaker is admissible as a witness in the action, though not on the indictment. *Cowper, 382.*

[Or bear any office or place of profit in the government] *E. 33 G. 2. K. and March.* By an act of the 26 G. 2. c. 18. a certain oath is required to be taken and subscribed upon admission to the freedom of the Turkey company. *Isaac Rogers*, a quaker, had made and subscribed his solemn affirmation and declaration to the effect of the oath. The

question

question was, whether this ought to be admitted instead of the oath. By the court, This is no office or place of profit in the government. This man's claim is nothing more, than to be admitted into a company of merchants trading to a particular part of the world. Even the remittances of publick money for the use and account of the government, given by his majesty to quakers, though the same may be very *profusable*, yet such appointment is no *office* or *place* in the government. *Burr. Mansf. 999.*

The quaker's solemn affirmation, instead of an oath, General form of affirmation.
as finally settled by the 8 G. c. 6. is as follows; viz.

"I A. B. do solemnly, sincerely, and truly declare and affirm."

Instead of the oaths of allegiance and supremacy, quakers Declaration of fidelity.
shall be allowed to make the following declaration of fidelity; by the 8 G. c. 6.

I A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to king George; and do solemnly, sincerely and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other what-soever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

By the same act of the 8 G. c. 6. Quakers were allowed Abjuration.
to take the effect of the abjuration oath according to the form therein prescribed. After the death of the person pretending to be king of *England* by the name of *James* the third, it became necessary to alter the form of the abjuration oath. Accordingly by the 6 G. 3. c. 53. a new form of abjuration oath is prescribed. But neither by that act, nor any other, is any provision made for altering the quakers affirmation or declaration conformable thereunto. It seemeth that the form thereof ought to be thus :

I A. B. do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe, that not any of the descendants of the person who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be, and took upon himself the style and title of king of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the style and title of king of Great Britain,

Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to any of them. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful, against all treacherous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity. And I will do my best endeavour to disclose and make known to king George, and his successors, all treasons and traiterous conspiracies, which I shall know to be against him, or any of them. And I will be true and faithful to the succession of the crown against the descendants of the said James, and against all other persons whatsoever, as the same is and stands settled by an act, intituled, An act declaring the rights and liberties of the subject, and settling the succession of the crown, to the late queen Anne, and the heirs of her body, being protestants; and as the same, by one other act intituled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands settled and entailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess Sophia, electress and dutchess dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

Profession of
Belief.

The quakers profession of their belief; by the 1 W. c. 18.

I A. B. profess faith in God the Father, and in Jesus Christ his eternal son, the true God, and in the Holy Spirit, one God blessed for evermore: and do acknowledge the holy scriptures of the old and new testament to be given by divine inspiration.

IV. Oaths of infidels, &c.

A Jew is to be sworn on the old testament, and perjury upon the statute may be assigned upon this oath. 2 Keb. 314.

H. 2 G. 2. Gomez Serra and Munex. Upon error in debt upon a bond, the bail being both Jews were suffered to put on their hats while they took the oath. Str. 821.

When

When Jews take the oath of abjuration, the words [*on the true faith of a christian*] shall be omitted. 10 G. c. 4. s. 18.

At the council, Dec. 9, 1738. Present the two chief justices. On a complaint of *Jacob Fuchina* against general *Sabine*, as governor of *Gibraltar*, *Alderaman Ben Monso*, a Moor, was produced as a witness, and sworn upon the *Koran*. Str. 1104.

So in the case of *Omichund* against *Barker*, H. 18 G. 2. In the court of chancery, the depositions of several persons who were heathens of the *Gentou* religion, sworn after their own country manner, were admitted to be read. 2 Eq. Caf. Abr. 397. 1 Atk. 21.

David Mildrone was produced as a witness at the *Old Bailey*, Feb. 1786, against a person for larceny. He stated to the court, that he was a *North Briton*, and that the way of swearing in *Scotland*, was not to kiss the book. *Gould J.* said, that on the trial of the rebels at *Carlisle* in 1745, finding it to be the ceremony of a particular sect, he admitted a witness to swear by the form of holding up his hand, without touching the book or kissing it. Which was afterwards determined to be right on a reference to the 12 judges; and on that authority *Mildrone* was sworn in the following form: *You swear according to the custom of your country, and the religion you profess, that the evidence you shall give, (and so on in the usual form.) So help you God.* Leach's Cr. Law, 319.

A Scotch covenant
na iura.

Concerning the taking of oaths for qualifying for offices, see title **Office**.

And concerning the offences of profane cursing and swearing, see title **Swearing**.

Office.

- I. Concerning the qualifications for offices in general.
- II. Concerning the qualification for offices in corporations.
- III. Duty on the perquisites of offices.

I. Qualifications for offices in general.

EVERY person who shall be admitted into any office civil or military, or shall receive any pay by reason of any patent or grant from the king, or shall have any command

Receiving the
sacrament, and
subscribing the
declaration.

mand or place of trust in *England* or in the navy, or shall have any service or employment in the king's household, shall, within three months after his admission, receive the sacrament of the Lord's supper according to the usage of the church of *England* in some publick church on the Lord's day, immediately after divine service and sermon: And in the court where he takes the oaths (as hereafter mentioned, which shall be within six months after his admission) he shall first deliver a certificate (A) of such his receiving the sacrament, under the hands of the minister and churchwardens, and shall then make proof of the truth thereof by two witnesses on oath. And shall also, when he takes the said oaths, make and subscribe the declaration against transubstantiation. All which shall be inquired of, and put upon record in the respective courts. 25 C. 2. c. 2. s. 2, 3, 9.

Clergymen.

Any office civil or military] This seemeth evidently not to extend to *ecclesiastical* offices. As if a clergyman be instituted to a benefice, although he must take the oaths as other persons qualifying for offices, yet he is not required to make proof of his having received the sacrament: But if he is admitted into a *civil* office, as for instance, the office of a justice of the peace, he must then prove that he hath received the sacrament; for the court in that respect considers him, not in his capacity of a clergyman, but merely as a civil officer.

Exceptions.

Also, by the words of the statute, the same shall not extend to the office of any *high constable, petty constable, tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways*, or any like inferior civil office, or to any office of *forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands*, or to any like private offices. s. 17.

Taking the oaths.

Every person who shall be admitted into any office civil or military; or shall receive any pay by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons; heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils; schoolmasters and ushers; preachers and teachers of separate congregations; high constables, and practisers of the law, shall, within six kalendar months after such admission, take and subscribe the oaths of allegiance, supremacy, and abjuration, in one of the courts at *Westminster*, or at the
general

general or quarter sessions of the place where he shall be or reside, between the hours of nine and twelve in the forenoon and no other; and during the time of taking thereof, all proceedings in the said court shall cease. 1 G. 2. c. 13. f. 2. 2 G. 2. c. 31. f. 3, 4. 9 G. 2. c. 26. f. 3. 25 C. 2. c. 2. f. 2.

But this shall not extend to the office of tithingman, headborough, overseer of the poor, churchwarden, surveyor of the highways, or any like inferior civil office, or to any office of forester, or keeper of any park, chase, warren, or game, or of bailiff of any manor or lands, or to any like private offices. 1 G. 2. c. 13. f. 20. Exceptions.

Which exception is the same with that in the 25 C. 2. save only, that *high constables* and *petty constables* by name are here omitted. *Petty constables* nevertheless seem to be excepted, as holding a *like inferior civil office* with the *tithingman* or *headborough*: But *high constables* are expressly inserted amongst the other officers required to take the oaths; although they are exempted by the former act, from being required to produce a certificate of their having received the sacrament, and from subscribing the declaration against transubstantiation.

And the court shall inroll such persons names, with the day and time of taking the oaths, and making the declaration, in rolls kept for that purpose only; which shall be hung up in some publick place of such court during the whole time of its sitting, to be seen without fee. 25 C. 2. c. 2. f. 6. Inrolling and fee.

And the clerk of the peace shall have no more than 2 s. for the entry. 1 G. 2. c. 13. f. 9.

But no seaman or soldier, under the degree of a commission or warrant officer, shall pay any fee for taking the oaths. f. 31. Seamen and soldiers.

Every person making default herein, shall be incapable to hold his office; and if he shall execute his office, after the said times are expired, he shall, upon conviction, be disabled to sue in any action, or to be guardian, or executor, or administrator, or capable of any legacy or deed of gift, or to bear any office, or vote at an election for members of parliament, and shall forfeit 500 l. to him who shall sue for the same. 25 C. 2. c. 2. f. 4, 5. 1 G. 2. c. 13. f. 8. Penalty of executing the office unqualified.

But persons beyond the seas, shall not be disabled, if they shall qualify within six months after their return. 9 G. 2. c. 26. f. 4. Exception of persons beyond seas.

Also no married woman, or person under 18 years of age, or *non compos mentis*, shall forfeit their office (other than Feme covert: Infant: Non compos.

than such married woman during the life of her husband only) if they take the oaths, and do the other things required, within four months respectively, after the death of the husband, coming to the age of 18 years, and becoming of sound mind. 25 C. 2. c. 2 f. 13.

General clause
of indemnifica-
tion.

Likewise, by some act in almost every session of parliament, persons who have omitted to qualify themselves in due time, are indemnified, provided they qualify within a time in such act limited, and provided judgment hath not been given against them for the penalty incurred by their neglect, and provided their place is not filled up.

Persons disquali-
fied may take a
new grant.

Also, any person forfeiting his office may take a new grant thereof, on his taking the oaths, and conforming; provided it be not filled up before. 1 G. 2. c. 13. f. 14.

Persons disquali-
fied in the uni-
versities.

In the universities, where persons shall not take the oaths, or shall not produce a certificate thereof, to be registered in their proper college, and others be not elected in their places within 12 months, the king shall appoint and nominate. f. 12, 13.

Offices of inheri-
tance may be
executed by de-
puty.

Persons refusing the oaths, having any office of inheritance, may appoint a deputy, so as such deputy be approved by the king under his privy signet. 1 G. 2. c. 13. f. 18.

Note, The forms of the abovesaid oaths and declarations, are inserted in the title *Oaths*.

II. Qualifications for offices in corporations.

To receive the
sacrament, and
take the oaths.

No person shall be placed, elected, or chosen, to any office or place of mayor, alderman, recorder, bailiff, town clerk, common council man, or other office of magistracy, place, or trust, or other employment, relating to the government of cities, corporations, boroughs, cinque ports, and other port towns, who shall not have received the sacrament of the Lord's supper according to the rites of the church of *England*, within one year next before such election: And every person so placed or elected, shall take the oaths of allegiance and supremacy, at the same time that the oath of office is taken; which shall be administered by those, who by charter or usage administer the oath of office; and in default of such, by two justices of the corporation, if there be any such; or otherwise by two justices of the county. And in default thereof every such election and placing shall be void. 13 C. 2. f. 2. c. 1. 5 G. c. 6. f. 1, 2.

And

And it hath been adjudged to be no excuse, that the oaths were not tendred. 1 *Haw.* 10.

Yet notwithstanding that the words of this act of the 13 C. 2. (and also of the 25 C. 2. hereafter following) are so very strong as to make the officer's election void to all intents and purposes, yet it hath been strongly holden, that the acts of a person under such a disability, being instated in such an office, and executing the same without any objection to his authority, may be valid as to strangers; for otherwise not only those who no way infringe this law, but even those whose benefit is intended to be advanced by it, might be sufferers for one another's fault, to which they are no way privy; and one chasm in a corporation, happening through the default of one head officer, would perpetually vacate the acts of all others, whose authority, in respect of their admission into their offices, or otherwise, may depend on his. 1 *Haw.* 10.

Which said justices abovementioned shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town clerk, or other register or clerk, who shall enter the same in their books. 13 C. 2. *B.* 2. c. 1.

Entering the same.

But no such office shall be void on account of not having received the sacrament, unless the person shall be removed in six months, or unless prosecution shall be commenced in six months, and carried on without wilful delay. 5 G. c. 6. s. 3.

Limitation of actions.

And if there be no such removal, or prosecution within the said time limited; the election stands confirmed, and becomes absolute. *Burr. Mansf.* 1013. *Crawford and Powell, T.* 33 & 34 G. 2.

And generally there is a clause of indemnification in some act in almost every session of parliament, provided they qualify on or before a time in such act limited.

General clause of indemnification.

III. Duty on the perquisites of offices.

By the 31 G. 2. c. 22. altered and explained by the 32 G. 2. c. 33. there are certain duties laid upon offices and pensions; and so much of the salaries of such offices, as ariseth from perquisites, is directed to be under the management of the commissioners of the land tax.

Duty on the perquisites of offices.

By *perquisites* are meant such profits of offices and employments, as arise from fees established by custom or authority, and payable either by the crown, or the subjects, in consideration of business done in the course of

Perquisites; what.

executing such offices and employments. 32 G. 2. c. 33. §. 8.

General duty on
offices and pen-
sions.

And there shall be paid yearly, over and above all other duties, 1 s. for every 20 s. of the yearly value of all salaries, fees, and perquisites, incident unto or received for or in respect of all offices and employments of profit in *Great Britain*, and the like sum of 1 s. for every 20 s. of a *pensions* and other gratuities payable out of any revenue belonging to his majesty in *Great Britain* exceeding the value of 100 l. a year. 31 G. 2. c. 22. §. 1.

And a deduction shall be made thereof in the exchequer or if paid by any person, and not out of the exchequer, then the same shall be paid by such person into the exchequer. §. 2.

So much thereof
as relates to per-
quisites, to be
under the man-
agement of the
commissioners of
the land tax.

But where the profits of such offices shall arise, in the whole or in part, from perquisites due and payable in the course of office, and not from salaries, fees, and wages payable by the crown; the same shall be under the management of the commissioners of the land tax, who shall ascertain according to the valuation of such offices to the land tax, or otherwise according to their best judgment, the sum total of the perquisites arising from such office, distinct from the salary, fees, and wages thereof. 31 G. 2. c. 22. §. 3. 5, 32 G. 2. c. 33. §. 5.

Manner of lay-
ing the assess-
ment.

In order whereunto the commissioners shall meet at the most common places of meeting, yearly, on or before July 3d, and afterwards as often as shall be necessary; and may subdivide; and any two or more of them, at such general meeting, or within eight days after, shall set down in writing, in a rate to be by them prepared for that purpose, the amount of the said duty of 1 s. in the pound, to be paid by all officers, their clerks, or agents, exercising any of the said employments, the salary, wages, fees, and perquisites whereof exceed the value of 100 l. a year. 31 G. 2. c. 22. §. 6.

And for the better ascertaining thereof, the receiver shall be appointed by his majesty for these duties shall transmit to the commissioners of the land tax in every district where any office is to be assessed, an account of all such offices whereof the salaries, fees, and wages do not exceed 100 l. a year; and if the commissioners shall find that the perquisites arising from such office, together with the salary, fees, and wages thereof as certified by the receiver, do exceed together the amount of 100 l. a year, they shall assess such office, and cause the duty of 1 s. a pound to be levied and collected thereon. 32 G. 2. c. 33. §. 6.

And

And where any person shall have two or more offices in any part of *Great Britain*, the salary and perquisites whereof together exceed 100 l. a year; such person shall pay 1 s. in the pound for the profits of such offices, notwithstanding the salary and perquisites of no one of the said offices is of the value of 100 l. a year. 31 G. 2. c. 22.

f. 23.

And deputies shall be liable to pay for their principals, and deduct the same out of the profits of their office.

f. 27.

Provided, that nothing herein shall extend to the pay of *Exemptions*, commission or non-commission officers or private men serving in the navy or army. f. 24.

Nor to the pay of any military officers serving on the staff, or belonging to any of his majesty's garrisons, regiments, troops, companies, *Chelsea Hospital*, or the hospitals of the army. 32 G. 2. c. 33. f. 11.

Nor to such pensions or gratuities as the king shall declare in the warrant directing the payment thereof, to be intended as charitable donations. f. 10.

Nor to any pension, annuity, rent, or sum charged upon the revenue by any of the king's predecessors, or by act of parliament, granted to any person in fee or fee tail, or till redeemed by payment of any sum mentioned in any grant or act of parliament. f. 12.

Nor shall any thing in the said act of the 32 G. 2. extend to charge any offices or employments in either of the two universities, with the duty by the said act of 32 G. 2. imposed. f. 13.

And the said commissioners, or any three of them, shall within the time above limited sign and seal two duplicates of the said rates, and cause one of them to be delivered to the collector of the land tax for each place respectively, or to such other two honest and responsible persons as they shall at their discretion appoint to be collectors thereof; with warrant to collect. 31 G. 2. c. 22. f. 6.

Signing the assessment, and appointing collectors.

Persons thinking themselves aggrieved by being *over-rated*, may appeal to the barons of the exchequer; and the said barons, or one of them, shall hear and determine all such appeals, on or before the last day of *Michaelmas* term yearly.—Persons charged may inspect the rates in the day time, without fee.—Notice of appeal to be given in writing to a collector. f. 6.

Appeal.

And if any dispute shall arise, whether the fees, salary, or wages of any office or employment, or whether any pension or gratuity, be chargeable, or touching the sum which ought to be stopped and deducted thereout; the

same shall be heard by the barons of the exchequer, on complaint or representation laid in writing before them either by the party grieved, or by the receiver. And the complainant shall give a copy of his complaint to the person against whom the same is made, within ten days after the same shall have been lodged with the barons; and they shall hear and determine such dispute in a summary way, and their determination shall be final. 33 G. 2. c. 33. f. 3, 4.

Duplicates to be transmitted.

The commissioners shall cause to be delivered a duplicate in parchment, under their hands and seals, containing the whole sum rated within each parish or place, to the said receiver; and another, into the remembrancer's office in the exchequer; on or before the first day of Hilary term, or within 20 days after (all appeals being first determined). 31 G. 2. c. 22. f. 6.

Collecting.

And the said duty shall be collected (where it is not herein otherwise directed) in all respects as the land tax for the year 1758. f. 7.

And in all cases where any fees, salaries, wages, or other allowances or profits on any office, shall be payable at the receipt of the exchequer, or by the cofferer of his majesty's household, or out of any other publick office, or by any of his majesty's receivers or paymasters; the duty, in case of non-payment, may be stopped there. f. 26.

Collector paying to the receiver.

And the payment of the said sums collected shall be paid to the receiver, in the course of the quarter wherein the same shall have been deducted; who shall give receipts for the same. 31 G. 2. c. 22. f. 12. 32 G. 2. c. 33. f. 1.

Receiver paying into the exchequer.

And the receiver shall, within the next quarter, pay the same into the exchequer. 32 G. 2. c. 33. f. 1.

A. Form of the certificate above-mentioned.

WE the minister and churchwardens of the parish of _____ in the county of _____ do hereby certify, that on Sunday the _____ day of _____ in the year of our Lord _____ in the parish church of _____ aforesaid, immediately after divine service and sermon, J. B. of _____ in the county of _____ gentleman, did receive the sacrament of the Lord's supper, according to the usage of the church of England. Witness our hands the day and year above written.

A. B. Minister.
C. D. } Church-
E. F. } wardens.

Orchards.

Orchards. See *Wood*.

Overseers of the poor. See *Poor*.

Outlawry. See *Process*.

Pamphlets. See *News-Papers*, *Stamps*.

Paper. See *Excise*.

Papists. See *Papery*.

Parchment. See *Stamps*.

Pardon.

A Pardon is a work of mercy, whereby the king either before the attainder, sentence, or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical. Pardon, what.
3 Inst. 233.

Pardons are either *general* or *special*: *General*, are by act of parliament; of which, if they are without exceptions, the court must take notice *ex officio*; but if there are exceptions therein, the party must aver that he is none of the persons excepted. *3 Inst. 233. Hale's Pl. 252.* General pardon.

By the act of 20 G. 2. c. 52. for the king's general pardon; all persons are pardoned and discharged from all treasons, misprisions of treasons, felonies, treasonable and seditious words and libels, leasing making, misprisions of felony, offences whereby any person may be charged with the penalty of *præmunire*, riots, routs, offences, contempts, trespasses, entries, wrongs, deceits, misdemeanors, forfeitures, penalties, sums of money, pains of death, pains corporal, and pains pecuniary, and generally from all other things, causes, quarrels, suits, judgments, and executions not by this act excepted, which can by the king be pardoned, and which were done or incurred before *June 15, 1647*.—Excepted, persons in the service of the pretender, or of *France* or *Spain*; forging the king's seal; coining; violating the privileges of ambassadors; murders; petty treasons; poisonings; burning of houses, corn, hay, straw, wood; shooting at any person; sending threatening letters; piracy; destroying ships; offences in the navy or army; burglary; sacrilege; robbery; sodomy; buggery; rape; perjury; subornation; forgery; felony in cases of bankruptcy; destroying banks of rivers and sea banks; firing coal pits; offences against the excise, customs, land tax, post

post office, stamp duties, duty on houses and windows, wool, importing or exporting goods; offences concerning highways or bridges; imbeziling goods, and warlike stores of the crown; titles of quare impedit; incest; simony; dilapidations; first fruits; tenths; money due to the king from publick officers on account; persons transported; offences by papists; contempts in cases for non-performance of awards, or non-payment of costs; contempts in ecclesiastical courts, in causes commenced for matters of right only, and not for correction; contempts in courts of admiralty proceeding civilly, and not criminally; and accepted, several persons by name.

And the like, for the most part, hath been enacted by former statutes of general pardon.

Special pardon.

Special pardons, are either *of course*, as to persons convicted of manslaughter, or *se defendendo*, and by divers statutes to those who shall discover their accomplices in several felonies; or, of *grace*, which are by the king's charter, of which the court cannot take notice *ex officio*, but they must be pleaded. 3 *Inst.* 233.

Pardon to contain the suggestion.

By the 27 *Ed.* 3. c. 2. In every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprized; and if it be found untrue, the charter shall be disallowed.

Pardon to specify the offence.

And by the 13 *R.* 2. *fl.* 2. c. 1. No charter of pardon shall be allowed for murder, treason, or rape, unless the offence be specified therein.

Lord *Coke* says, the intention of this act was not, that the king should grant a pardon of murder by express name in the charter, but because the whole parliament conceived that he would never pardon murder by special name. And he says, he hath never seen any pardon of murder by any king of *England*, by express name. 2 *Inst.* 233. 236.

The king cannot pardon an offence before it is committed, Cannot pardon an appeal.

The king cannot pardon an offence before it is committed; but such pardon is void. 2 *Haw.* 389.

As the release of the party will not bar an indictment at the suit of the king; so neither will a pardon by the king be any bar to an appeal at the suit of the party. 2 *Haw.* 392.

Cannot pardon a nuisance.

And in some cases, even where the king is sole party, some things there are which he cannot pardon; as for example, for all common nuisances, as for not repairing of bridges or highways, the suit (for avoiding multiplicity of suits) is given to the king only, for redress and reformation thereof; but the king cannot pardon or discharge either the nuisance, or the suit for the same; because such pardon would take away the only means of compelling a redress of it. But it hath been holden by some, that a

pardon

pardon of such offence will save the party from any fine, for the time precedent to the pardon. 3 *Inst.* 237. 2 *Haw.* 391.

Thus also, if one be bound by recognizance to the king, to keep the peace against another by name, and generally all other lieges of the king; in this case, before the peace be broken, the king cannot pardon or release the recognizance, although it be made only to him, because it is for the benefit and safety of his subjects. 3 *Inst.* 238. Cannot discharge a recognizance.

Likewise, after an action popular is brought, *as will for the king as for the informer*, according to any statute, the king can but discharge his own part, and cannot discharge the informer's part; because by bringing of the action the informer hath an interest therein: but before the action brought, the king may discharge the whole (unless it be provided to the contrary by the act) because the informer cannot bring an action or information originally for his part only, but must pursue the statute. And if the action be given to the *party grieved*, the king cannot discharge the same. 3 *Inst.* 231. Cannot release an information qui tam.

It seems to have been always agreed, that the king's pardon will discharge any suit in the spiritual court *ex officio*. Also it seems to be settled at this day, that it will discharge any suit in such court at the instance of the party, for the reformation of manners, or welfare of the soul, as for defamation, or laying violent hands on a clerk, and such like; for such suits are in truth the suits of the king, though prosecuted by the party. Also, it seems to be agreed, that if the time to which such pardon hath relation, be prior to the award of costs to the party, it shall discharge them: And it seems to be the general tenor of the books, that though it be subsequent to the award of the costs, yet if it be prior to the taxation of them, it shall discharge them; because nothing appears in certain to be due for costs before they are taxed. 1 *Haw.* 394. May discharge a suit in the spiritual court.

But it seems agreed, that a pardon shall not discharge a suit in the spiritual court, any more than in a temporal, for a matter of interest or property in the plaintiff; as for tithes, legacies, matrimonial contracts, and such like. 2 *Haw.* 394.

If the king release to a man all debts, this shall not discharge his partner; but otherwise it is in case of a subject, for in that case the release to one discharges both. 3 *Inst.* 239. Doth not by releasing a man release his partner.

When a pardon is pleaded by any one for felony, the justices may at their discretion remand him to prison till he enter into recognizance, with two sureties, for his good behaviour, for any time not exceeding seven years. 5 *W.* 13. Person pardoned may be bound to the good behaviour.

Pardon doth not
restore lands or
goods forfeited.

It seems to be a settled rule, that no pardon by the king without express words of restitution, shall divest, either from the king or subject, an interest either in lands, or goods, vested in them, by an attainder or conviction precedent: Yet it seems agreed, that a pardon prior to a conviction, shall prevent any forfeiture either of lands or goods. 2 *Haw.* 396.

Doth not restore
the corruption
of blood.

A pardon after the attainder doth not restore the corruption of blood, for this cannot be restored but by act of parliament. 3 *Inst.* 233.

But as to issue born after the pardon, it hath the effect of the restitution of blood. 1 *H. H.* 358.

Doth restore the
credit.

It seems to be settled at this day, that the pardon of treason or felony, even after a conviction or attainder, doth so far clear the party from the infamy and all other consequences of his crime, that he may not only have an action for a scandal, in calling him traitor or felon, after the time of the pardon, but may also be a good witness, notwithstanding the attainder or conviction; because the pardon makes him as it were a new man, and gives him a new capacity and credit. 2 *Haw.* 395.

But it seems to be the better opinion, that the pardon of a conviction of *perjury* doth not so restore the party to his credit as to make him a good witness; because it would be an injury to the people in general, to make them subject to such a person's testimony. 1 *Vent.* 349.

Parliament.

- I. Matters previous to the election.
- II. Election to be free.
- III. Qualification of the candidates.
- IV. Qualification of the electors.
- V. Polling.
- VI. Return.
- VII. Privilege of parliament.
- VIII. How long the parliament shall continue.

I. Matters previous to the election.

Time of pro-
ceeding to the
election in coun-
ties.

WHEN any new parliament shall be summoned there shall be 40 days between the teste and return of the writ; and, as well upon the calling of a new

new parliament, as upon a vacancy in parliament time, the writ shall be delivered to the proper officer to whom the execution thereof doth belong, and to no other person : And every such officer, upon receipt of the writ, shall indorse thereon the day that he received it. 7 & 8 W. c. 25. f. 1.

And upon an election of a knight of the shire, the sheriff shall within two days after the receipt of the writ, cause proclamation to be made, at the place where the ensuing election ought by law to be holden, of a special county court to be there holden for the purpose of such election only, on any day (Sunday excepted) not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day ; and shall proceed in such election, at such special county court, in the same manner as if the said election was to be held at a county court, or an adjournment thereof, according to the laws now in being. 25 G. 3. c. 84. f. 4.

Provided, that the usual county court for all other purposes, or any adjournment thereof, may be held and proceeded in by the sheriff, in the same manner, and at the same times and places, as if the writ for the election of a knight of the shire had not been received. *id.*

And the sheriff shall appoint such number of clerks as he shall think fit for taking the poll in the presence of himself or deputy. 7 & 8 W. c. 25. f. 3. Clerks for taking the poll.

And the sheriff shall admit one person for each candidate to be inspector of the clerks. 7 & 8 W. c. 25. f. 3. Inspectors.

And the sheriff shall erect, at the expence of the candidates, such number of booths for taking the poll, as the candidates or any of them shall, three days at least before the commencement of the poll, desire ; not exceeding the number of hundreds or other like division, and not exceeding 15 in the whole ; and shall affix, on the most publick part of each, the name of the hundred for which such booth is designed. 18 G. 2. c. 18. f. 7. Booths to be erected.

And shall make out a list for each booth of the several towns, parishes, and hamlets, wholly or in part within such hundred ; and shall, on request, deliver a copy to any of the candidates, paying for the same 2s. *id.*

And shall appoint clerks at each booth to take the poll ; who shall be paid by the candidates, not exceeding each one guinea a day. *id.*

And the sheriff shall allow a cheque book for every poll book, for each candidate ; to be kept by their inspectors, at every place where the poll shall be taken. f. 9. Cheque book.

With

In cities, boroughs, and towns corporate.

With respect to cities, boroughs, and towns corporate, the sheriff or other officer who received the writ shall forthwith upon receipt thereof make out a precept to each borough, town corporate, or place within his jurisdiction where any members are to be elected, and within three days (and in the cinque ports within six days, 10 & 11 W. c. 7.) after receipt of the said writ, shall by himself or proper agent deliver the precept to the proper officer of such borough, town corporate, or place within his jurisdiction, to whom the execution of such precept doth belong, and to no other person whatsoever: And every such officer shall indorse the day of his receipt thereof in presence of the party of whom he received the same, and shall forthwith cause publick notice to be given of the time and place of election, and shall proceed to the election within eight days after receipt of the precept, and give four days notice at least of the day appointed for the election. 7 & 8 W. c. 25. s. 1.

In cities or towns being counties of themselves.

And in a city or town being a county of itself, the sheriff shall forthwith on receipt of the writ give publick notice of the time and place of election, and proceed to election thereupon, within eight days next after the receipt of the writ, and give three days notice thereof at least, exclusive of the day of receipt of the writ and of the day of election. And the sheriff shall allow a cheque book for every poll book for each candidate, to be kept by their inspectors at the place of taking the poll. 19 G. 2. c. 28. s. 6, 7.

II. Election to be free.

Elections to be free.

By the 3 Ed. 1. c. 5. Because elections ought to be free, the king commandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election.

And by the declaration of rights, 1 W. s. 2. c. 2. it is insisted, That elections of members of parliament ought to be free: And that freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

Soldiers to be removed.

And by the 8 G. 2. c. 30 On notice of an election, the secretary at war shall send orders for the removal of soldiers one day at least before the election, and not to return till after the poll shall be closed. But this not to extend to the guards, nor to any castle or fortified place, where a garrison is usually kept: Nor to any officer or soldier having right to vote at such election.

By

By the 9 *Ann. c. 10. f. 44.* No officer of the *post office* shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving his vote in any election.—And by the 5 *W. c. 20.* and 9 *Ann. c. 11. f. 49.* there is the like provision with respect to the officers of *excise*.—And the like by the 12 & 13 *W. c. 10.* with respect to the officers of the *customs*.

Officers of the post office not to interfere.

III. Qualification of the candidates.

No person under the age of 21 years shall be capable of being elected. 7 & 8 *W. c. 25. f. 8.*

No papist shall sit in either house of parliament. 30 *Papist. C. 2. f. 2. c. 1.*

Sir *William Blackstone* says, No person concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury, nor any of the officers following, (*viz.* commissioners of prizes, transports, sick and wounded, wine licences, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licences, hackney coaches, hawkers and pedlars,) nor any persons that hold any new office under the crown created since 1705, are capable of being elected or sitting as members. 1 *Black. 175.*

Placemen.

And if any member shall accept an office of profit from the crown, during such time as he shall continue member (offices of the army and navy excepted), his election shall be void, and a new writ shall issue: But he shall be capable of being re-elected. 6 *An. c. 7. f. 26.*

By the 22 *G. 3. c. 41.* All persons holding contracts made with the commissioners of the treasury, navy, victualling office, or board of ordnance, for or on account of the publick service, shall, during the time they shall hold such contracts, be incapable of being elected or of sitting or voting in the house of commons.

Contractors.

No person having a pension from the crown during pleasure, shall be capable of being elected. 6 *An. c. 7. f. 25.*

Pensioners.

Neither shall any person having a pension from the crown for any term of years, either in his own name, or in

in

in the name of any other in trust for him, be capable of being elected. 1 G. 2. c. 56.

Qualification by
estate.

No person shall be capable to sit or vote in the house of commons for a county, unless he hath an estate freehold or copyhold, for his life or some greater estate, of the clear yearly value of 600l.; nor for a city or borough unless he hath a like estate of 300l. And any other candidate or two electors may, upon reasonable request to him made (at the time of the election, or before the day pre-fixed for the meeting of the parliament), require him to take the following oath :

Oath of qualification.

I A. B. do swear, that I truly and bona fide have such an estate in law or equity, to and for my own use and benefit of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, of the annual value of ——— above reprises, as doth qualify me to be elected and returned to serve as a member for the ——— of ——— according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, or hereditaments are lying or being within the parish, township, or precinct of (as the case shall be). The same to be administered by the returning officer or two justices; who shall in three months certify the same into the chancery or king's bench; but this not to extend to the eldest son of a peer, or of any person qualified to serve as knight of a shire, nor to the members for either of the two universities. 9 An. c. 5.

Qualification to
be delivered in
at the table of
the house.

And every member, before he shall vote in the house of commons, or sit there during any debate, shall, after the speaker is chosen, deliver in at the table in the middle of the house, whilst the house is there sitting, with the speaker in the chair, an account signed by such member containing the name of the place where his qualification lies, declaring the same to be of the annual value of 600l. above reprises, if a knight of a shire; and of 300l. if a citizen, burgess, or baron of the cinque ports; and shall also at the same time take and subscribe the oath following :

Oath to be there
taken.

I A. B. do swear, that I truly and bona fide have such an estate in law or equity, and of such value, to and for my own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, as doth qualify me to be elected and returned to serve as a member for the place I am returned for according to the tenor and true meaning of the acts of parliament.

in that behalf; and that such lands, tenements, or hereditaments do lie as described in the paper or account signed by me, and now delivered to the clerk of the house of commons. So help me God.

—But this also shall not extend to the eldest son or heir apparent of a peer, or of any person qualified to serve as a knight of a shire, or to the members of either of the universities. 33 G. 2. c. 20. Exceptions.

IV. Qualifications of the electors.

No person shall be admitted to vote under the age of 21 years. 7 & 8 W. c. 25. s. 8. Age.

Every elector, before he is admitted to vote, shall, if required, take the oath of abjuration. 6 An. c. 23. s. 13. Papish.

By the 22 G. 3. c. 41. No person employed in managing the duties of excise, customs, stamp duties, salt, houses and windows, or revenue of the post office, shall be capable of voting for a member to serve in parliament; and if he shall presume to vote during the time that he shall hold such office, or within 12 calendar months after he shall have ceased to hold the same, his vote shall be void, and he shall forfeit 100l. Person employed in the revenue.

By the 8 H. 6. c. 7. Every elector of a knight of the shire shall have land or tenement to the value of 40s. by the year at least above reprises. And the sheriff shall have power to examine upon oath every such chuser how much he may expend by the year. And by the 10 H. 6. c. 2. the said 40s. a year shall be freehold. Freehold of 40s. a year.

And by the 18 G. 2. c. 18. No person shall vote for a knight of the shire, without having a freehold estate in the county, of the clear yearly value of 40s. over and above all rents and charges payable out of the same. s. 5.

But taxes and assessments shall not be deemed a charge payable out of the lands. s. 6.

No person shall vote for any estate which was granted to him fraudulently, on purpose to qualify him to give his vote. s. 5. Fraudulent conveyance.

But all such conveyances fraudulently made to qualify any person to vote, subject to conditions to defeat the same, shall be deemed and taken as absolute against the person executing the same, and discharged of all trusts, conditions, and other defeazances; and all bonds, covenants, or other securities for the defeating or reconveying the same, shall be void. 10 An. c. 23. s. 1.

All conveyances to multiply voices, or to split votes, shall be void; and no more than one voice shall be admitted. Splitting votes.

mitted for one and the same house or tenement. 7 & 8 W.
c. 25. f. 7.

None to vote
more than once.

No person shall vote in any election more than once.
18 G. 2. c. 18. f. 5.

Mortgage or
trust estate.

The mortgagor or *cestui que trust* shall vote; and not the
trustee or mortgagee, unless they be in actual possession
7 & 8 W. c. 25. f. 7.

Tenant in
dower.

Husbands of women intitled to dower out of the estate
of their former husbands, may vote in respect thereof, al-
though the said dower hath not been set out by metes and
bounds; provided that the dower be worth 40s. a year, and
the husband be in the actual receipt of the profits thereof.
20 G. 3. c. 17. f. 12.

Possession for
12 months.

No person shall vote for a knight of the shire, with-
out having been in the actual possession of the estate for which
he votes, or in the receipt of the rents or profits thereof for
his own use, above 12 calendar months; unless the same
came to him by descent, marriage, marriage settlement, de-
vise, or promotion to a benefice or office. 18 G. 2. c. 18.
f. 5.

To be charged
to the land tax.

No person shall vote for a knight of the shire in respect
of any messuages, lands, or tenements, which have not, for
six calendar months next before such election, been assessed
to the land tax, in his own name, or in the name of his
tenant occupying the same. — Provided that this shall not
extend to annuities or fee farm rents (duly registered) iss-
uing out of the premises, nor to any person who became in-
titled as aforesaid to the premises by descent, marriage,
marriage settlement, devise, or promotion to a benefice or
office, within twelve calendar months next before such
election; but such person shall be intitled to vote, if the
premises have been assessed within two years next before
in the name of the respective owner or occupier. 20 G.
3. c. 17. f. 1, 2.

And the commissioners of the land tax, at their meeting
for appointing assessors, shall cause to be delivered to each
assessor, a printed form of an assessment, according to
which they shall make their assessments; which shall be in
this manner:

County of N. }
to wit. }
For the parish }
of — in the }
said county. }

An assessment made in pursuance
of an act of parliament passed in the —
year of his majesty's reign, for grant-
ing an aid to his majesty by a land tax
to be raised in Great Britain, for the
service of the year —

Names of proprietors.	Names of occupiers.	Sums assessed.
A. B. _____	Himself. _____	_____
A. B. _____	C. D. _____	_____
E. F. _____	C. D. _____	_____
C. D. _____	G. H. _____	_____
J. K. } _____	N. O. _____	_____
and		
L. M. } _____	R. S. _____	_____
P. Q. _____	and	
	T. U. _____	_____

Signed this _____ day of _____ 17 _____ By us,

A. B. }

C. D. }

assessors.

And by 30 G. 3. c. 35. After reciting that doubts had arisen, whether if such form be not strictly pursued, the suffrage of the person claiming to vote would be admissible; It is therefore enacted, that nothing in the said act shall prevent any person from voting for any messuages, lands, or tenements, on account of the tenant actually occupying the same, not being inserted in such assessment according to the said form. Or although the name of the person claiming to vote, or by or through whom he derives his title, or his predecessor, shall not be inserted in the assessment in the form aforesaid; provided such messuages, lands, and tenements have been assessed to the land tax for six calendar months next before such election in the name of the tenant actually occupying the same at the time of the assessment being made.

And if any person shall hold or occupy any messuages, lands, or tenements belonging to different owners, the same shall be separately rated, that the proportion of the land tax to be paid by each separate owner may be ascertained. *f. 3. 20.*

And they shall make three duplicates of such assessments; and shall (at least 14 days before delivering the assessments to the commissioners) cause one of the said duplicates, or a fair copy thereof, to be stuck up upon the door of the church or chapel, or if it be an extraparochial or other place where there is no church or chapel, then on the door of the church or chapel next adjoining. *f. 3.*

And the said duplicates shall be delivered to the commissioners, at their meeting for receiving the assessments. *f. 3.*

And if the name of any owner intitled to vote shall not appear

appear to be inserted in the assessment, he may, on giving notice in writing to one of the assessors, appeal to the said commissioners; who shall amend the assessment as they shall see cause: And if any person shall think himself aggrieved by the determination of the commissioners, he may appeal to the next sessions, giving ten days notice thereof to one of the commissioners who signed the duplicate, and to one of the assessors of the place where the estate lies: and the sessions may award costs to either of the parties, and by their order or warrant levy the same by distress. And if the said commissioners, or the justices in sessions, upon any appeal before them respectively, shall find it requisite to insert the names of any persons who have been improperly omitted; such persons shall be deemed to be rated as effectually as if their names had been originally inserted. *s. 3. 10, 11.*

And the commissioners shall cause one of the duplicates so amended (after having been signed and sealed by the said commissioners or any three of them) to be returned to the assessors; who shall within ten days deliver the same to the chief constable, taking his receipt for the same; and the chief constable shall deliver upon oath such duplicate, without alteration, at the next sessions in open court, the first day of the sessions, to the clerk of the peace, to be by him filed and kept amongst the records. And if the assessor shall not deliver such duplicate so amended to the chief constable; or if the chief constable shall neglect to deliver the same to the clerk of the peace, or wilfully alter the same; he shall forfeit 5*l.*—And at the Michaelmas sessions yearly, the clerk of the peace shall examine, whether all the said duplicates respectively have been delivered for that year; and if it shall appear that any such duplicates have not been received by or delivered to such clerk of the peace by the chief constables, he shall report the same to the court, and the court shall immediately impose the said fine upon the chief constable, and the clerk of the peace shall give him immediate notice thereof; and if not immediately paid, the justices at such sessions shall by order of court issue a warrant of distress for the recovery thereof, directed to the constable of the place where such chief constable shall dwell.—But if the chief constable shall make oath at such sessions, that such duplicate was not delivered to him by the assessor, the said fine shall be imposed upon such assessor or assessors; and the justices shall by order of court issue a warrant of distress for the recovery thereof, directed to the constable of the place or other such person as they shall think proper,

and shall require the chief constable to give notice to such assessor of the said fine being imposed, who shall within 14 days give such notice accordingly: and if such assessors, or one of them, shall not deliver such duplicate to the clerk of the peace within ten days after such notice, then the warrant of distress shall be put in execution against such assessor accordingly. But if the assessor shall, within ten days after such notice, produce to the clerk of the peace the chief constable's receipt for such duplicate, then the fine shall be levied on the said chief constable as aforesaid.

—Which said fines, when recovered, shall be paid to the treasurer, and applied as part of the county stock.

f. 3—8.

And when any assessment shall not have been made by the assessors, and returned to the chief constable, and by him to the clerk of the peace; the justices in sessions, or any two justices out of sessions, may order such assessments forthwith to be made and returned in manner aforesaid. *f. 9.*

And it shall be lawful for all person, at any reasonable times, to inspect the duplicates in the hands of the clerk of the peace, paying 1s. for each inspection; and the clerk of the peace shall on demand deliver copies of the whole or any part thereof (signed by him, purporting the same to be a true copy) being paid at the rate of 6d. for every 300 words: Which said duplicates or copies thereof signed as aforesaid, and also the duplicate of any assessment in the possession of the commissioners, or in the possession of the receiver general, or a copy of the said duplicates signed by such commissioners and purporting the same to be a true copy, shall be admitted as legal evidence. And after issuing the writ for the election, the clerk of the peace or his deputy shall attend gratis from day to day, from the hour of nine in the forenoon to three in the afternoon, at the place where the records are usually kept, from the time of delivery of such notice to the day immediately preceding the day of election; for the purpose of inspection and making the copies. And if he shall fail of his duty in any of the said particulars, he shall forfeit 500l. with full costs, to the party grieved, if the action be brought within two months, or otherwise to any person who shall sue within 12 calendar months; and shall also forfeit his office and be incapacitated for holding the like office for the future.

f. 13—19.

Finally, the clerk of the peace shall, on reasonable notice, attend at the election of every knight of the shire, with the original duplicates, at the request of any candidate, paying to him after the rate of two guineas for each day of his

Freeholder's
oath.

attendance, and 1s. 6d. a mile for the costs and charges in his journey from the place of his abode to and from the place of election. *s.* 14.

Every freeholder, before he is admitted to poll for knight of the shire, shall, if required by a candidate or a new elector, take the following oath (to be administered by the sheriff, under sheriff, or one of the sworn clerks): *You shall swear, (or being one of the people called Quakers, You shall solemnly affirm) that you are a freeholder in the county of ——— and have a freehold estate, consisting of ——— (specifying the nature of such freehold estate, whether messuage, land, rent, tithe, or what else; and if such freehold estate consists in messuages, lands, or tithes, then specifying in whose occupation the same are; and if in rent, then specifying the names of the owners or possessors of the lands or tenements out of which such rent is issuing, or of some or one of them) lying or being at ——— in the county of ——— of the clear yearly value of 40s. over and above all rents and charges payable out of or in respect of the same; and that you have been in the actual possession or receipt of the rents or profits thereof, for your own use, above 12 calendar months; or that the same came to you within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in the church, or by promotion to an office; and that such freehold estate hath not been granted or made to you fraudulently, on purpose to qualify you to give your vote; and that the place of your abode is at ——— in ——— and that you are 21 years of age, as you believe; and that you have not been polled before at this election.——And if he falsifies, he shall suffer as in cases of perjury. 18 G. 2. c. 18. *s.* 1.*

And the sheriff and clerks shall enter not only the place of his freehold, but also the place of his abode, as he shall declare the same at the time of giving his vote; and shall enter *jurat'* against the name of every such voter who hath taken the oath. 10 An. c. 23. *s.* 5.

And the aforesaid act of the 18 G. 2. c. 28. shall extend to cities and towns that are counties of themselves, where persons have a right to vote in respect of a freehold of 40s. a year; but not where they have a right to vote in respect of burgage tenure, or where the right to vote for a freehold doth not require the same to be of 40s. a year. 19 G. 2. c. 28.

Annuity and
freehold.

No person shall vote in the election of a knight of a shire, or member for a city or town being a county of itself, in respect of any annuity or rent charge granted before June 1, 1763; unless a certificate upon oath be entered with the clerk of the peace or town clerk, 12 months before the election, as follows: *I A. B. of ——— am*

really

really and bona fide seised of an annuity or rent charge, for my own use and benefit, of the clear yearly value of 40 s. above all rents and charge, payable out of the same, wholly issuing out of freehold lands, tenements, or hereditaments belonging to C. D. of ——— situate, lying and being in the parish, township, or place, or in the parishes, townships, or places of E. in the county of ——— without any trust, agreement, matter, or thing, to the contrary notwithstanding; and I, or the person or persons under whom I claim, was or were seised of the said annuity or rent charge, before the first day of June 1763. And a like certificate shall be entred (*mutatis mutandis*) where such rent charge came by descent, marriage, devise, or promotion to a benefice or office. 3 G. 3. c. 24. s. 1, 2.

And no person shall vote at such election in respect of any annuity or rent charge granted *after* June 1, 1763; unless a memorial of the grant of such annuity or rent charge shall have been registered with the clerk of the peace or town clerk, 12 calendar months at least before the first day of such election:

Which memorial shall be written on parchment, and directed to the clerk of the peace or town clerk, and shall be under the hand and seal of the grantor, and attested by two witnesses, one whereof to be one of the witnesses to the execution of such grant; which witness shall upon oath before such clerk prove the sealing and delivery of the grant, and the signing and sealing of the memorial:

And the said memorial shall contain the day and year of the date, and the names, additions, and abodes of the parties and witnesses, and all the lands and tenements out of which the rent charge issues, and the place where they lie:

And the grant shall, at the time of entering the memorial, be produced to such clerk of the peace or town clerk, who shall indorse thereon a certificate in which shall be mentioned the day and year on which such memorial shall be entred. s. 3.

And no person shall vote by reason of an assignment of such annuity or rent charge, without like certificate, entry, and memorial of such grant and assignment, as in case of an original grant. s. 4.

The clerk of the peace or town clerk to have for the entry of such certificate 1s. and of the memorial 2s.; for search thereof 1s. and for copies at the rate of 6d. for every 200 words. s. 5.

No person, claiming as a freeman to vote at an election for any city, town, port, or borough, shall be admitted to
R 2 poll,

Occasional freemen in corporations,

poll, unless he hath been admitted to his freedom 12 calendar months before the first day of the election: and if he shall presume to vote contrary thereto, he shall forfeit 100*l.* and his vote shall be void. And if any person shall antedate such admission he shall forfeit 500*l.* 3 G. 3. c. 15.

Provided that nothing herein shall extend to the cities of *London* or *Norwich*; nor to any person entitled to his freedom by birth, marriage, or servitude, according to the custom of such city, town, port, or borough. *id.*

And no person shall be admitted to vote at any election for any city, or borough, as an inhabitant paying scot and lot, or inhabitant, householder, housekeeper, and pot waller, legally settled, or resiant, or as an inhabitant thereof, unless he shall have been actually and *bona fide* an inhabitant within such city or borough for six calendar months previous to the day of election; and such vote shall be null and void, and he shall forfeit 20*l.* to be recovered in the courts at *Westminster* within six months: Provided that the same shall not extend to any person, who shall acquire the possession of any house in such city or borough, by descent, devise, marriage, or marriage settlement, or promotion to any office or benefice. And this shall relate only to persons who claim to vote as inhabitants, in manner as aforesaid, and shall not extend to any other description of persons who may claim to vote by any other title, or by any other superadded qualification. 26 G. 3. c. 100. s. 1, 2.

Bribery.

By the 7 & 8 W. c. 4. No candidate, after teste of the writ of summons, or after a place becomes vacant in parliament time, shall, by himself, or by any other ways or means on his behalf, or at his charge, before his election, directly or indirectly, give or promise to give to any elector, any money, meat, drink, provision, present, reward, or entertainment, to or for any such elector in particular, or to any county, city, town, borough, port, or place in general, in order to his being elected: on pain of being incapacitated.

And by the 2 G. 2. c. 24. (which is required to be read by the returning officer immediately after reading the writ, and also at Easter sessions yearly for any county or city, and at every election of the chief magistrate in any borough, town corporate, or cinque port) — Every person, before he is admitted to poll, shall, if required by either of the candidates or any two electors, take the following oath, to be administered by the returning officer or his deputy: *I A. B. do swear (or, being one of the people called Quakers, I A. B. do solemnly affirm) I have not received or had by myself, or any person whatsoever in trust*
for

for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place, or employment, gift, or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election; and that I have not before been polled at this election. s. 1.

And if any person shall take any money or other reward, or contract or agree for any money, gift, office, employment, or other reward, to give or forbear to give his vote; he shall forfeit 500l. s. 7.

And in all cases where no oath of qualification, other than the said oath against bribery, or the oaths of allegiance, supremacy, and abjuration, can now by law be required, every person claiming to give his vote, shall (if required as aforesaid), before he is admitted to poll, take the oath following: New oath.

I do swear [or affirm] that my name is A. B. and that I am [specifying the addition, profession, or trade of such person], and that the place of my abode is at ——— in the county of ——— [and if it is a town of more streets than one, specifying what street]; and that I have not before polled at this election; and that I verily believe myself to be of the full age of 21 years. 25 G. 3. c. 84. s. 5.

V. Polling.

Before the returning officer shall proceed to the election, he shall, immediately after the reading of the writ, take and subscribe the following oath, to be administered by a justice of the peace or any three electors: *I A. B. do solemnly swear, That I have not directly nor indirectly received any sum or sums of money, office, place, or employment, gratuity, or reward, or any bond, bill, or note, or any promise of gratuity whatsoever, either by myself or any other person to my use or benefit or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes: Which oath shall be entred amongst the records of the sessions. 2 G. 2. c. 24. s. 3.* Returning officer to be sworn.

And if the election shall not be determined upon view, but a poll shall be demanded, the same shall commence on the day on which such demand is made, or upon the next day at farthest (unless it be Sunday, and then on the day after); and shall be duly and regularly proceeded in from day to day (Sundays excepted) until the same be finished; but so as not to continue more than 15 days at most (Sundays excepted), and if the same shall continue for 15 days, A poll being demanded.

then to be finally closed, before the hour of three in the afternoon of that day. 25 G. 3. c. 84. s. 1.

Poll to be kept
open seven hours
a day.

And every returning officer, unless prevented by some unavoidable accident, shall cause the said poll to be kept open for seven hours at least in each day, between eight in the morning and eight at night. *id.* s. 3.

Poll clerks to be
sworn.

And every person employed as a poll clerk, shall, before he begins to take such poll, be sworn by such returning officer, truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll. *id.* s. 7.

What votes shall
be deemed legal.

And such votes shall be deemed legal, which have been so declared by the last determination in the house of commons: Which last determination, concerning any county, city, borough, cinque port, or place, shall be final to all intents and purposes. 7 & 8 W. c. 25 s. 4.

VI. Return.

After the election, the names of the persons chosen shall be written in an indenture under the seals of the electors, and tacked to the writ. 7 H 4. c. 15.

Return to be
made.

And the returning officer shall immediately after the final close of the poll, or on the day next after, truly, fairly, and publickly declare the name of the person who hath the majority of votes, and shall forthwith make a return of such person; unless the returning officer, upon a scrutiny being demanded by any candidate, or any two electors, shall deem it necessary to grant the same; in which case he shall proceed thereon, but so, as that in all cases of a general election, every returning officer having the return of the writ, shall cause a return of a member to be filed in the crown office, on or before the day on which such writ is returnable: And every other returning officer, acting under a precept or mandate, shall make a return of a member in obedience to the same, six days at least before the day of the return of the writ, by virtue of which such election has been made; and so that in case of any election upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then that a return of a member shall be made within 30 days after the close of the poll (or sooner if the same can conveniently be done). 25 G. 3. c. 84. s. 1.

Return not to be
contrary to the
last determina-
tion.

And if any officer shall return any member contrary to the last determination in the house of commons, the same shall be adjudged a false return; and the party duly elected may

may recover double damages, with full costs. 7 & 8 W.

6. 7.

And the like remedy shall be against an officer making a double return. *id.* Double return.

And whenever a scrutiny shall be granted as aforesaid, and there shall be more parties than one; the returning officer shall decide alternately on the votes given for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on. 25 G. 3.

6. 84. f. 2.

And such returning officer may, if he see cause during such scrutiny, administer an oath to any person consenting to take the same, touching the right of any person having voted, or touching any other matter or thing, material or necessary towards carrying on such scrutiny. *id.* f. 6. Witnesses may be sworn.

Provided, that nothing herein shall extend to alter or affect the election of any member for any place where particular regulations have been made by statute. *id.* f. 9.

And if upon any writ issued no return shall be made, on or before the day on which such writ is returnable; or if a writ shall have been issued during any session or prorogation of parliament, and no return shall be made within 52 days after the day on which such writ bears date, or if the return made in either case shall not be a return of a member according to the requisition thereof, but contain special matter only concerning such election: Any person having or claiming a right to vote, or claiming a right to be returned, who shall think himself aggrieved, may petition the house of commons concerning the same; and upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be forthwith given by the speaker to the petitioners, and to the officer by whom such return should have been made, accompanied with an order to attend the house at the time appointed, by themselves, or their counsel, or agents; and a select committee shall be appointed, according as is directed by 10 & 11 G. 3. who shall proceed therein as by the said acts are directed: and all rules and regulations in either of the said acts contained shall extend to this act. *id.* f. 10, 11. Where no member is returned.

And every person who in taking any oath herein-before appointed, shall thereby commit wilful perjury, or unlawfully and corruptly procure or suborn any other person to take any such oath, whereby he shall commit such wilful perjury; and shall be thereof convicted, he shall incur such penalties as are inflicted by 5 El. c. 9. & 26 G. 2. c. 25. f. 8. Persons committing perjury.

Copies of the
poll.

And every such sheriff or returning officer shall deliver copies of the poll to any person desiring the same, paying a reasonable charge for writing thereof. 7 & 8 W. c. 25. f. 6.

Finally, he shall, within 20 days after the election, deliver over upon oath (to be administered by the two next justices, 1 Q.) the poll books to the clerk of the peace, without alteration; to be kept amongst the records of the sessions. 10 An. c. 23. f. 5.

Petition to the
house of com-
mons.

And on petition to the house of commons, complaining of an undue election, 49 members of the house of commons shall be chosen by ballot, out of whom each party shall alternately strike out one, till they be reduced to the number of 13; who, together with two more, of whom each party shall nominate one, shall be a select committee for determining such controverted election. 10 G. 3. c. 16. 11 G. 3. c. 42.

VII. Privilege of parliament.

Privilege of
himself and ser-
vants.

By the common law, a member of parliament shall have the privilege of parliament, not only for himself and his servants, to be freed from arrest, subpœna, citation, and the like; but also for his horses and goods to be free from distresses; but for treason, felony, and breach of the peace, there can be no privilege. 4 Inst. 24, 25.

Not privileged
against a process
of the courts at
Westminster.

T. 31 G. 2. *Rex v. Earl Ferrers*: A writ of *habeas corpus* having been granted, and served upon the said earl, returnable *immediate*, to bring up the body of his countess, who was sister to Sir *William Meredith*, (to the end that she might have an opportunity to lay her case before the court, and swear the peace if she should think proper, thereby to receive the protection of the court against the said earl); and he the said earl having neglected to return the said writ; Mr. *Norton* and the other counsel for Sir *William Meredith*, on behalf of his sister, intended to have moved for an attachment against the earl for this his disobedience. But some doubts and difficulties having been started by members of both houses, concerning the privilege of peerage, and whether the court of king's bench could issue an attachment against a peer during the sitting of parliament, and execute it upon him, only for a contempt to their court; Sir *William* judged it prudent to petition the house of lords, for their leave to proceed against the earl, and accordingly (by the hands of the earl of *Westmorland*) delivered a petition, stating the facts. Lord *Delaware* opposed it; and said, it was too summary and hasty

a method of determining upon their privileges ; and proposed referring the matter to a committee, and summoning Lord *Ferrers* to answer it in his place : And to obviate the objections, which might be made to this method, on account of the delay, he offered some schemes for the immediate safety of the countess. But *L. Mansfield* answered him, and spoke in support of the jurisdiction of his court, and the unreasonableness, injustice, and inconvenience of allowing such a privilege, in criminal cases and breaches of the peace. The duke of *Argyle* spoke to the like effect, and expressed a surprize that there should be any doubt about it ; the reason of the thing being so clear and plain. Lastly, the earl of *Hardwicke* spoke strongly and particularly in support of the same doctrine, and adduced many instances and precedents in proof of his positions ; and concluded with proposing, that to put an end to all doubt about it for the future, the lords should come to a resolution ; and accordingly they did come to the following resolution or declaration, and ordered it to be entered on their journal, viz. “ 7 February 1757, It is ordered and declared, that no peer or lord of parliament hath privilege against being compelled by process of the courts of *Westminster-hall*, to pay obedience to a writ of *Habeas corpus* directed to him.” *Burr. Mansf.* 631.

May be sued, but not arrested.

By the 12 & 13 *W. c.* 3. and 11 *G. 2. c.* 24. Any person may bring an action against a peer or member of parliament, or any of their menial or other servants, immediately after the dissolution or prorogation, until a new parliament meet, or the same be reassembled ; and from any adjournment of both houses for above 14 days, until both houses shall meet or reassemble ; and the courts during such time may proceed to give judgment and award execution.——But this shall not extend to subject the person to be arrested during the time of privilege ; but the plaintiff may prosecute at law by summons and distress infinite, or by original bill and summons, attachment, and distress infinite, until the defendant shall enter a common appearance, or file common bail : And in equity, the plaintiff may proceed by letter or subpoena ; and after service thereof, may, for want of appearance or answer, or non-performance of an order or decree, or for breach thereof, sequester the real and personal estate of the party, but not arrest his body.

By the 4 *G. 3. c.* 33. with respect to *bankrupts*, the petitioners, on affidavit of the debt, and that they verily believe that the debtor is a trader within the statutes of bankruptcy, may sue out a summons, or an original bill and

Bankrupts.

and summons, and serve him with a copy thereof; and if he shall not, within two months after service, pay the debt, or enter into bond to pay such sum as shall be recovered, with costs, he shall be adjudged a bankrupt from the time of service of the summons, and the creditors may proceed against him as against other bankrupts. Provided, that this shall not extend to subject any person intitled to privilege to be arrested during the time of such privilege, except in cases made felony by any of the statutes of bankruptcy.

Prosecuting actions against peers or members of parliament.

And by the 10 G. 3. c. 50. Any person may commence and prosecute any action in any court of record or court of equity, or of admiralty (or, in causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary), against any peer or member of the house of commons, or any of their menial or other servants, or any other person intitled to privilege of parliament; and no proceedings thereupon shall be delayed under colour of such privilege. Provided, that this shall not subject the person of any member of the house of commons to be arrested or imprisoned on any such suit or proceedings. And to remedy the dilatoriness by process of *Distringas*, the court out of which the writ proceeds, may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff as the court shall think just, and the surplus to be detained till the defendant shall have appeared, or other purpose of the writ be answered. And obedience may be enforced to any rule of the court of king's bench, common pleas, or exchequer, against any person intitled to privilege, by distress infinite, if the person intitled to the benefit of such rule shall chuse to proceed in that way.

VIII. How long the parliament shall continue.

To continue seven years.

The parliament shall have continuance for seven years, to be accounted from the day on which by the writ of summons they shall be appointed to meet; unless sooner dissolved by the king. 1 G. 3. c. 38.

Not dissolved by the death of the king.

And they shall not be dissolved by the king's death, but shall continue and immediately meet, sit, and act for six months, unless sooner dissolved by the successor. And if there be then no parliament in being, the last preceding parliament shall meet, sit, and act as aforesaid. 7 & 8 W. c. 15. 6 An. c. 7.

Parfnips.

THE penalty for stealing parfnips is the same as for stealing turnips: For which, see the title *Turnips*.

Partition.

BY the 8 & 9 *W. c.* 31. intituled, An act for the easier obtaining partitions of lands in coparcenary, jointtenancy, and tenancy in common, it is enacted, that if the high sheriff cannot conveniently be present at the execution of any judgment in partition, in such case the under sheriff in presence of two justices may proceed to execution of the writ of partition.

Partridge. See *Game*.

Pawning.

BY the 25 *G. 3. c.* 48. Every person exercising the trade of a *pawnbroker*, shall take out a licence, for which he shall pay, if within the bills of mortality, 10 l.; elsewhere 5 l.; and shall renew the same annually, ten days at least before the end of the year, on pain of forfeiting 50 l.: to be recovered in the courts at *Westminster*. *s.* 1. 3. 4. 12.

Licence.

The same to be under the management of the commissioners of the stamp duties. *s.* 2.

And no person shall keep more than one house or shop by virtue of one licence; but persons in partnership need only take out one licence for one house. *s.* 7, 8.

All persons who shall receive by way of pawn, pledge, or exchange, any goods, for the repayment of money lent thereon, shall be deemed pawnbrokers. *s.* 5.

Who shall be deemed pawnbrokers.

But the same shall not extend to any person who shall lend money at 5 l. per cent, interest, without taking any further or greater profit for the loan thereof. *id.* *s.* 6. 29 *G. 3. c.* 57. *s.* 23.

Not to extend to persons lending money at 5 per cent.

And every pawnbroker shall cause his *name*, and the word *pawnbroker* to be put up in large legible characters, over the door of his shop or other place used by him for carrying on such business, on pain of forfeiting 10 l. for every

Certain words to be put up.

every shop or place made use of for one week without having the same put up: To be recovered by confession, or oath of one witness, by distress, by warrant under the hands and seals of two justices, half to the informer, and half to the poor; and for want of sufficient distress, the offender to be committed to gaol or house of correction not exceeding three months, nor less than fourteen days unless such penalty and reasonable charges shall be sooner paid. 29 G. 3. c. 57. s. 17.

Rate of profit to be taken.

And every pawnbroker may demand and take the following rates over and above the principal sum advanced before he shall be obliged to re-deliver the goods pawned (viz.)

For every pledge upon which there shall have been lent not exceeding 2 s. 6 d. one halfpenny, for any time not exceeding one calendar month, and the same for every month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired:

If	5 s.	shall have been lent thereon,	1 d.
—	7 s. 6 d.	— ditto —	1½ d.
—	10 s.	— ditto —	2 d.
—	12 s. 6 d.	— ditto —	2½ d.
—	15 s.	— ditto —	3 d.
—	17 s. 6 d.	— ditto —	3½ d.
—	1 l. 0 s.	— ditto —	4 d.

And so on progressively and in proportion for any sum not exceeding 40 s. and if exceeding 40 s. and not exceeding 10 l. after the rate of 3 d. for every 20 s. by the calendar month including the current month, and so in proportion for any fractional sum; which said several sums shall be in lieu of, and taken as a full satisfaction for interest due, and charges for warehouse room. *id.* s. 1.

And where any intermediate sum lent upon pawn shall exceed 2 s. 6 d. and not amount to 40 l. the person lending the same may take a profit as aforesaid of 4 d. and no more, for the loan of 20 s. by the calendar month, including the current month as aforesaid. *id.* s. 2.

Provided always, that the party intitled to, and applying for redemption of goods pawned within seven days after the end of the first month after the same have been pledged, may redeem the same without paying any thing by way of profit to the broker for the said seven days, or such part thereof as shall then have elapsed; and after the expiration of the said first seven days, and before the expiration of the first fourteen days of the second month, he may redeem such goods upon paying the profit payable for one month

and a half ; but if after the expiration of the fourteen days and before the end of the said second month, the broker may take a profit of the whole second month : and that the like regulation and restriction shall take place in every subsequent month wherein application shall be made for redeeming goods pawned. *id. f. 3.*

And every pawnbroker shall cause to be painted or printed in large legible characters, the rate of profit allowed by this act to be taken, and also the various prices of the notes or memorandums to be given according to the rates aforesaid, and an account of such as are to be given *gratis*, and of the expence of obtaining a second note or memorandum, where the former one has been lost, mislaid, destroyed, or fraudulently obtained ; and place the same in some conspicuous part of the shop or place where such business is carried on, so as to be visible to the persons pledging or redeeming goods, under forfeiture of 5 l. f. 16. 20.

Table of the rates to be put up.

And every person who shall take any goods by way of pawn, pledge, or exchange, whereon shall be lent above 5 s. shall, before he advance or lend any money thereon, enter in a fair and regular manner, in a book to be kept for that purpose, a description of such goods, and the sum lent thereon, with the day and year, and name and place of abode of the person by whom they were pawned, and also of the owner according to the information of the person so pawning the same ; and if the sum lent shall not exceed 5 s. such entry shall be made within four hours after the said goods shall have been pawned ; and at the time of taking every pawn, a note or memorandum written or printed shall be given to the person pawning the same, containing a description of such goods received in pawn, and also the money advanced thereon, with the day and year, and names of the parties as aforesaid : and upon which said note or memorandum, or on the back thereof, shall be written or printed, the name and place of abode of such broker, which note or memorandum the party pawning such goods is required to take, and unless he shall take the same, such broker shall not receive and retain such pledge : And such note where the sum lent is under 5 s. shall be given *gratis*.

An account of goods pawned to be entered in a book.

If the sum lent is 5 s. and under 10 s. such broker may take $\frac{1}{2}$ d.

Ditto 10 s. ditto 20 s. ditto 1 d.

Ditto 20 s. ditto 5 l. ditto 2 d.

Ditto 5 l. and upwards ditto 4 d.

Which note shall be produced to the broker before he shall be obliged to re-deliver such goods, except as hereafter

Pawning goods
the property of
others.

after is excepted. 30 G. 2. c. 24. f. 4. 29 G. 3. c. 57. f. 4.

If any person shall knowingly and designedly pawn, exchange, or unlawfully dispose of the goods of any other person, not being employed or authorized by the owner to do, and shall be thereof convicted by the oath of one witness, or confession, before one justice, he shall forfeit 20 s. and also the full value of the goods; and if not forthwith paid, the said justice shall commit him to the house of correction or some other publick prison of the place where he shall reside or be convicted, there to remain and be kept to hard labour for not more than three nor less than one calendar month, unless the forfeiture shall sooner be paid: And if within three days before the expiration of the said term of commitment, the said forfeiture shall not be paid; the said justice, upon application of the prosecutor, shall order him to be publickly whipped in such house of correction or prison, or in some open public place of the county, city, division, town, or place where the offence shall have been committed, as to such justice shall seem proper. The said forfeitures, when recovered, to be applied towards making satisfaction thereof to the party injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by such justice; but if the party injured shall decline to accept of such satisfaction and costs, or if there be any overplus of the same, then such forfeitures or overplus shall be paid to the overseers for the use of the poor of such parish or place. 30 G. 2. c. 24. f. 3. 29 G. 3. c. 57. f. 5.

Forging or counterfeiting notes or memorandums.

And if any person shall counterfeit, forge, or alter, or make such note or memorandum, or procure the same to be done; or shall utter, vend, or sell such note knowing the same to have been counterfeited, forged, or altered, with intent to defraud any person; such offender shall be punished as hereafter mentioned: and any person, or servant or agent, to whom such note shall be uttered or offered, which he shall have reason to suspect has been counterfeited, forged, or altered, may seize the person offering the same, and deliver him to a constable, who shall convey him before some justice of the place where such offence is supposed to have been committed; and if upon examination it shall appear to the satisfaction of such justice, that such person is guilty, he shall commit him to the gaol or house of correction of the county or place where such offence was committed, for any time not exceeding three months, nor less than one calendar month. 29 G. 3. c. 57. f. 6.

And if any person who shall offer by way of pawn, pledge, exchange, or sale, any goods, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof, or shall give any false information as to whether such goods are his own property or not; or if there shall be any other reason to suspect that such goods are stolen, or otherwise illegally or clandestinely obtained: or if any person not intitled, nor having any colour of title, by law to redeem such goods, shall attempt to redeem the same; it shall be lawful for any person, his servant, or agent, to whom the same shall be offered, to seize and detain such person, and the said goods, and to deliver him immediately into the custody of a constable, who shall, as soon as may be, convey such person and the said goods before a justice; and if such justice shall upon examination and enquiry have cause to suspect that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem the same hath not any pretence or colour of right so to do, he shall commit such person into safe custody for such reasonable time as shall be necessary for obtaining proper information, in order to be further examined; and if upon either examination it shall appear to the satisfaction of such justice, that the said goods were stolen, or illegally or clandestinely obtained, or that the person offering to redeem the same, hath not any pretence or right so to do; he shall commit such offender to the gaol or house of correction of the county or place where the offence was committed, to be dealt with according to law, where the nature of the offence shall authorize such commitment by any other law; and where the nature of the offence shall not authorize such commitment by any other law, then such commitment shall be for any time not exceeding three months, nor less than one month, at the discretion of such justice. 30 G. 2. c. 24. s. 7, 8. 29 G. 3. c. 57. s. 7.

Persons offering goods in pawn not giving a good account of themselves.

And if any person shall knowingly buy, or take in as a pledge, any linen or apparel entrusted to any other person to wash, scour, iron, mend, or make up; and shall be convicted thereof, on the oath of one witness, or confession, before one justice; he shall forfeit double the sum given or lent on the same, to the poor, to be recovered as other forfeitures by this act: and shall be obliged to restore the said goods to the owner in presence of the justice. 30 G. 2. c. 24. s. 6.

Linen, &c. put out to wash or mend, &c.

And if the owner of any goods unlawfully pawned, pledged, or exchanged, shall make out either on his oath, or

Owners of goods unlawfully pawned may search for the same.

or by the oath of one witness before one justice, that such owner hath had his goods unlawfully obtained or taken from him, and that there is just cause to suspect that any person within the jurisdiction of such justice hath knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods of such owner, and without his privity or authority; and make appear to the satisfaction of such justice, probable grounds for such the owner's suspicion: such justice may issue his warrant for searching in the day time the house, warehouse, or other place of any such person so charged as aforesaid; and if the occupier of such house, warehouse, or other place shall, on request to him made to open the same by any peace officer authorized to search there by warrant of such justice, refuse to open and permit the same to be searched, it shall be lawful for such peace officer to break open any such house, warehouse, or other place in the day time, and to search as he shall think fit therein for the goods suspected to be therein, doing no wilful damage; and if any person shall oppose or hinder any such search, and shall be thereof convicted before one justice by the oath of one witness, he shall forfeit 5 l. and if the same shall not be immediately paid down or within the space of 24 hours, the justice shall commit him to the house of correction or some other publick prison, there to be kept to hard labour for any time not exceeding one month, nor less than five days, unless in the mean time the forfeiture shall be paid, and such forfeiture when recovered, shall go to the poor; and if upon such search any of the goods shall be found, and the property of the owner shall be made out to the satisfaction of such justice by the oath of one witness, or confession, such justice shall thereupon cause the same to be forthwith restored to the owner. 30 G. 2. c. 24. s. 9. 29 G. 3. c. 57. s. 8.

Pawnbrokers refusing to deliver up goods pawned.

And if any goods shall be pawned or pledged for securing any money lent thereon, not exceeding in the whole the principal sum of 10 l. and the profit thereof; and within one year after the pawning thereof, (proof having been made on oath by one witness, or by producing the note or memorandum directed to be given by this act aforesaid, before any such justice, of the pawning of such goods within the said space of one year,) any such pawnbroker who was the real owner of such goods at the time of the pawning thereof, shall tender to the person who lent on security of the said goods the principal money borrowed thereon, and profit according to the rates by this act established; and if the person who took the goods in pawn

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shall thereupon neglect or refuse to deliver back the goods so pawned for any sum not exceeding the said principal sum of 10 l. to the person who borrowed the money thereon : then, and in such case, on oath thereof made by the pawn-er, or some other credible person, any justice of the place where the person who took such pawn shall dwell, on the application of the borrower, shall cause such person to come before him, and shall examine on oath the parties themselves, and such other credible persons as shall appear before him, touching the premisses : and if tender of the principal money due and all profit thereof as aforesaid, shall be proved by oath to have been made as aforesaid, within the space of one year ; then on payment by the borrower of such principal money and the profit due thereon as aforesaid, to the lender, and in case the lender shall refuse to accept thereof on tender before such justice, the said justice shall thereupon, by order under his hand, direct the goods so pawned forthwith to be delivered to the pawn-er : and if the lender shall neglect or refuse to deliver up, or make satisfaction for such goods as aforesaid, as such justice shall order ; then he shall commit the party refusing to the house of correction, or some other publick prison, until he shall deliver up the said goods according to the order of such justice, or make satisfaction for the value thereof to the party intitled to the redemption. 30 G. 2. c. 24. s. 10. 29 G. 3. c. 57. s. 9.

And whereas inconveniences have arisen to pawnbrokers from several different persons claiming a property in the same goods ; for remedy whereof, it is enacted that the person who shall produce such note or memorandum as aforesaid, and require a delivery of the goods mentioned therein, shall be deemed the owner ; and such pawnbroker, after receiving satisfaction respecting principal and profit as aforesaid, shall deliver such goods to the person producing such note or memorandum, and he shall be indemnified ; unless he shall have had previous notice from the real owner not to deliver such goods ; or notice that the same are suspected to have been fraudulently or feloniously taken or obtained ; and unless the real owner proceed in manner hereafter mentioned, for redeeming of goods pledged, where such note or memorandum hath been lost, mislaid, destroyed, or fraudulently obtained from the owner thereof. 29 G. 3. c. 57. s. 10.

Persons producing notes or memorandums deemed the owners.

And in case such pawnbroker shall have had such notice as aforesaid, or if any such note or memorandum shall be lost, mislaid, destroyed, or fraudulently obtained from the owner, and the goods mentioned therein shall remain
VOL. III. S unredeemed,

Where notes, &c. are lost, a copy to be delivered.

unredeemed, the broker with whom such goods were pledged, at the request of any person who shall represent himself as the owner thereof, shall deliver to such person a copy of such note or memorandum, with the form of an affidavit of the particular circumstances attending the case written thereon, as the same shall be stated to him by the party applying; for which copy and affidavit in case the money lent shall not exceed 10 s. the broker shall receive 1 d. and if above 10 s. he shall receive the like sum as he is intitled to take on giving the original note or memorandum, to be paid by the person applying: and the person having obtained such copy and form of an affidavit, shall thereupon prove his property in such goods to the satisfaction of some justice, and also verify on oath the truth of the particular circumstances attending the case mentioned in such affidavit; the caption of such oath to be authenticated by the hand-writing of such justice; whereupon the broker shall suffer the person proving such property to redeem such goods, on leaving such note or memorandum and affidavit with such broker. *id.* f. 11.

Pawned goods may be sold at the end of one year;

And all pawned goods shall be deemed forfeited, and may be sold at the expiration of one year [by the act of 30 G. 2. c. 24. f. 11. at the expiration of two years] from the time of pawning the same, and where the sum lent thereon shall be above 10 s. and not exceeding 10 l. shall be sold by publick auction, but not otherwise, by the broker; and the same shall be exposed to publick view, and a catalogue thereof published, and an advertisement giving notice of such sale, and containing the name of such broker, shall be inserted in some publick newspaper, two days before the first day of sale, on pain of forfeiting to the owner 5 l. *id.* f. 12.

Unless notice be given before the end of the year.

Provided nevertheless, that if any person intitled to redeem such goods, shall, before the end of the year, give notice in writing to the person who has the same in pawn, or leave such notice at his usual place of abode, not to sell such goods at the end of the said year, the same shall not be sold until 3 months from the end of the said year, during which 3 months the owner shall have liberty to redeem the said goods on the terms aforesaid. *id.* f. 13.

An account of goods sold to be entered in a book.

And every pawnbroker shall enter in a book to be kept for that purpose, a just account of the sale of such goods, expressing the day when, and the money for which the same were sold, together with the name and place of abode of the auctioneer and purchaser; and if such goods are sold for more than is due thereon, the overplus shall be paid on demand to the person by whom, or on whose account such

good

goods were pawned, if such demand be made within *three* years after such sale, the necessary costs and charges of such sale being first deducted; and the person who pawned such goods, shall for his satisfaction, be permitted to inspect the entry made of such sale, paying for such inspection 1 d. and no more. And if any person shall refuse the person who pawned such goods to inspect such entry, or if he be an executor, administrator, or assignee, at such time producing his letters testamentary, letters of administration or assignment; or if the goods were sold for more than the sum entered in such book; or if such person shall not have made such entry; or shall not have *bona fide* sold the goods for the best price, and according to the directions of this act; or shall refuse to pay such overplus on demand as aforesaid; he shall forfeit treble the sum such goods were originally pawned for, to the person by whom, or on whose account they were pawned; to be levied by distress by two justices where the offence shall be committed. 30 G. 2. c. 24. s. 11, 12. 29 G. 3. c. 57. s. 14.

And no person having goods in pawn, shall, either by himself or other person, purchase any such goods during the time they shall remain in his custody upon such pawn (except at such publick auction); nor shall suffer the same to be redeemed with a view or intention of purchasing thereof; nor make any contract with any person offering to pawn the same, or with the owner of the pawn, for the purchase, sale, or disposition of the said goods, before the end of one year from the time of pawning the same; nor shall purchase, receive, or take any goods in pawn from any person who shall appear to be under the age of 12 years; or to be intoxicated with liquor: Or purchase or take in pawn or exchange the note or memorandum aforesaid of any other broker; nor buy any goods in the course of his trade before 8 o'clock in the morning, nor after 7 in the evening; nor receive any goods by way of pawn or exchange before 8 in the morning, nor after 9 in the evening between *Michaelmas-day* and *Lady-day*; nor before 7 in the morning and after 10 in the evening the remainder of the year, except only on the evenings of *Saturday* throughout the year, and the evenings preceding *Good-friday* and *Christmas-day*, on which days, and on *Sundays*, no person shall carry on the trade of a pawnbroker. 29 G. 3. c. 57. s. 15.

And if it shall appear, or be proved upon oath before a justice, that the goods pawned as aforesaid have been sold before the time limited, or embezzled, or become of less value than when pawned, through the neglect or wilful

Pawnbroker not to purchase goods whilst they are under pawn.

Time for taking in pawns limited.

Selling goods before the time limited or the same being damaged.

misbehaviour of the person to whom they were pawned such justice shall award a reasonable satisfaction to the owner in respect of such damage; and the sum so awarded in case the same shall not amount to the principal and profit due to such broker, shall be deducted thereout, and it shall be sufficient for the pawner to pay or tender the balance, and upon so doing such justice shall proceed as if the pawner had paid or tendered the whole money due for principal and profit as aforesaid: And if such satisfaction to be allowed, shall be equal to, or exceed the principal and profit as aforesaid, then such broker shall deliver the goods so pledged to the owner, without being paid anything for principal or profit; and shall also pay such expenses (if any), on penalty of 10 l. to be recovered in manner hereafter mentioned. 30 G. 2. c. 24. s. 9. 29 G. c. 57. s. 18.

Books, &c. are to be produced.

And on every occasion where such justice shall think it necessary to require the production of any book, note, voucher, or other paper necessary which shall or ought to be in the hands or power of any broker, he shall summon him to attend with the same, which he is required to produce in the state the same was made at the time the pawn was received, without any alteration, erasure, or obliteration whatsoever; and in case he shall neglect to attend, or to produce the same in its true and perfect state, he shall, unless he shew good cause to the satisfaction of such justice, forfeit 10 l. for the use, and to be levied as hereafter mentioned. 29 G. c. 57. s. 19.

Penalties how to be recovered and applied.

All pawnbrokers offending against this act, in neglecting to make in a fair and regular manner in such book as aforesaid, such entry as is required to be made, shall forfeit 10 l. And for every other offence where no forfeiture or penalty is imposed, he shall forfeit 5 l. And all penalties and forfeitures may be levied by distress by one justice where the offence shall be committed, who may award out of such penalty to the party complaining 2 l. 10 s. and the remainder (not otherwise disposed of and applied by this act) shall go to the poor. *id.* s. 20.

Information to be given within 12 months.

Provided, that no person shall be liable to any prosecution before any justice, unless information be given within 12 calendar months next after the offence was committed. *id.* s. 21.

Churchwardens to prosecute.

And the churchwardens and overseers of the parish place where any offence shall be supposed to have been committed, or some one of them, at the discretion of such justice, on having notice from him for that purpose, shall prosecute such offender at the expence of such parish place. *id.* s. 22.

And any justice, unto whom complaint upon oath shall be made of any offence committed against this act, shall issue his warrant for bringing before him, or some other justice of such place, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction: and if it shall appear upon oath, to the satisfaction of such justice, that any person within his jurisdiction can give material evidence on behalf of the prosecutor, or of the person accused, and who will not voluntarily appear; he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him; and on his appearance, if he shall refuse to be examined on oath, without offering just cause for such refusal, the justice shall commit him to the publick prison for any time not exceeding three months: and if on such examination the justice shall deem the evidence of any such witness to be material, he may bind over such witness, unless a feme-covert, or under the age of 21 years, by recognizance in a reasonable penalty, to appear and give evidence at the next sessions or assizes. 30 G. 2. c. 24. f. 16.

Power of the justices.

And in all proceedings on these acts, any person may be a witness notwithstanding his being an inhabitant of the place wherein the offence shall have been committed. 30 G. 2. c. 24. f. 18. 29 G. 3. c. 57. f. 27.

Inhabitants may be witnesses.

Provided, that no fee or gratuity shall be taken for any summons or warrant of any justice, so far as the same relates to goods pawned, pledged, taken in exchange, or unlawfully disposed of. 30 G. 2. c. 24. f. 13. 29 G. 3. c. 57. f. 24.

No fees to be taken.

And no person charged on oath with being guilty of any of the offences punishable by this act, and which shall require bail, shall be admitted to bail before 24 hours notice at least shall be proved by oath to have been given in writing to the prosecutor, of the names and places of abode of the persons proposed to be bail for any such offender, unless the bail offered shall be well known to the justice, and he shall approve of them. And every such offender who shall be bound over to the sessions or assizes, shall be tried at the next sessions or assizes to be held after his being apprehended, unless the court shall think fit to put off the trial on just cause made out to them. 30 G. 2. c. 24. f. 16.

Offenders how bailable.

And the justice before whom any person shall be con-

victed upon either of these acts, shall cause the conviction to be drawn up in the form or to the effect following:

Conviction.

_____ { *Be it remembred, that on this _____ day of _____*
to wit. { *in the _____ year of his majesty's reign, A. B.*
is convicted before _____ of his majesty's justices of the peace
for the said county of _____ [or, for the riding, or division,
of the said county of _____ or, for the city, liberty, or town,
of _____ as the case shall be] for _____ and the said
_____ do adjudge him (or her) to pay and forfeit for the
same the sum of _____. Given under _____ the day and
year aforesaid.

The same to be written upon parchment, and transmitted to the next sessions, to be filed amongst the records; and if any person shall appeal to the said sessions, the justices there shall, upon receiving the said conviction, proceed to hear and determine the matter. 30 G. 2. c. 24. s. 19. 29 G. 3. c. 57. s. 28.

And no *certiorari* shall be granted, to remove any proceedings on either of these acts. 30 G. 2. c. 24. s. 20. 29 G. 3. c. 57. s. 28.

Appeal.

And if any person convicted of any offence punishable by these acts shall think himself aggrieved by the judgment of the justice before whom he shall have been convicted, he may appeal to the next sessions, and the execution of the judgment shall in such case be suspended, the person convicted entering into recognizance at the time of the conviction, with two sureties in double the sum he shall have been adjudged to pay, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of, and pay such costs as shall be awarded at the said sessions; and the sessions shall award such costs as shall appear just and reasonable to be paid by either party; and if the judgment shall be affirmed, the appellant shall immediately pay the sum adjudged to be forfeited, together with such costs as the court shall award, or, in default thereof, shall suffer the pains and penalties by this act inflicted upon persons respectively, who shall neglect to pay, or shall not pay the forfeitures by this act to be paid. 30 G. 2. c. 24. s. 21. 29 G. 3. c. 57. s. 29.

And persons sued for any thing done on these acts, may have double costs. 30 G. 3. c. 24. 29 G. 3. c. 57. s. 26.

Justices indemnified.

And justices acting under 30 G. 2. c. 24. shall be indemnified as by the 24 G. 2. c. 44. And no suit shall be

com-

commenced against any peace officer for any thing done in the execution of this act, until notice in writing shall have been given to him, or left at his usual place of abode by the attorney employed against him; which notice shall contain the name and place of abode of the person who is to bring the action, together with the cause of action; and the name and place of abode of the attorney shall be underwritten or indorsed thereon; and such peace officer may, at any time within 14 days after such notice, tender or cause to be tendered any sum as amends for the injury complained of, to the party complaining, or to the said attorney; and if the same is not accepted of, the defendant may plead such tender in bar of such action, together with the general issue, or any other plea, with leave of the court; and if the jury shall find the amends to have been sufficient, or otherwise the plaintiff shall fail in the action, he shall have his costs; and if the plaintiff shall prevail he shall have such damages as the jury shall think proper, together with full costs, 30 G. 2. c. 24. s. 23.

[N. B. The aforesaid act 29 G. 3. c. 57. was in force for one year only, and to the end of the next session of parliament. But by 31 G. 3. c. 52. it is further continued for one year, and from thence to the end of the then next session of parliament.]

Peace. See **Surety**.
Peace, stealing. See **Turnips**.
Pedlars. See **Hawkers**.

Peers.

DUKES, earls, and barons, are not conservators of the peace at common law; and have no more power as such than mere private persons. 2 *Huw.* 32. Not conservators of the peace.

The safest way of proceeding against a peer, for sureties of the peace or good behaviour, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127. Sureties of the peace against them.

A nobleman must be tried by his peers: but this is to be understood only at the suit of the king, upon an indictment of high treason, petit treason, felony, or misprision thereof; but in case of a premunire, riot, or the like, and generally for all other crimes out of parliament, (unless otherwise specially provided for by statute, as it is in many instances,) though it be at the suit of the king, he shall not Trial of peers.

Whether they
may be outlaw-
ed.

Whether they
shall be burnt
in the hand.

Evidence.

be tried by his peers, but by the freeholders of the county. 3 *Inst.* 30. 2 *Haw.* 424.

Process of outlawry lies against a peer, if he be indicted, and appears not, and cannot be taken; otherwise he might take advantage of his own contumacy. 3 *Inst.* 31.

Peers shall have the benefit of clergy for the first offence of felony, without burning in the hand. 1 *Ed.* 6. c. 12. *f.* 14.

A peer produced as a witness ought to be sworn. 3 *Keb.* 631.

But this is to be understood of criminal prosecutions and not civil actions.

Penitentiary houses, for the punishment of convicts.
See Transportation.

Perfumery.

Licence.

BY 26 G. 3. c. 49. Every person who shall vend or expose to sale any powders, pastes, or other articles subject to the duties hereafter mentioned, shall take out a licence from the stamp officers, for which he shall pay 1s. and shall renew the same annually ten days at least before the end of the year; on pain of forfeiting 5l. *f.* 4, 5, 6, 7.

And shall cause the words, *Licensed to deal in perfumery*, to be painted or written in large and legible characters, and put over his door, or on the front of his house, within 20 days of his taking out such licence, on pain of forfeiting 5l. *f.* 8.

And every person who shall fix up, or hang out such notice, or continue the same, without having a licence remaining in force, shall forfeit 20l. *f.* 9.

Duty.

And upon every packet, bottle, or other inclosure, containing any powders, pastes, balls, balsams, ointments, oils, waters, washes, tinctures, essences, liquors, or other preparations or compositions whatsoever, commonly called or known by the name of *sweet scents*, *odours*, or *perfumes*, or by the name of *cosmetics*, mixed or unmixed with other materials; on every packet or bottle, or other inclosure containing any dentifrice powders, tinctures, or other preparation or composition for the teeth or gums; and for every roll, cake, or piece, packet, box, pot, or other inclosure, containing any pomatum, ointment, or other prepara-
tion

tion or composition for the hair; or any hair powder, the price whereof shall exceed 2s. a pound; shall be charged a stamp duty according to the following rates; (that is to say,) where the contents shall not exceed the value of 8d. shall be charged a stamp duty of 1d.

Above 8d. and not exceeding 1s. do. 1½d.

— 1s. do. 2s. 6d. do. 3d.

— 2s. 6d. do. 5s. 0d. do. 6d.

Of 5s. value and upwards, do. 1s. 0d.

And for every packet of hair powder not exceeding the value of 2s. a pound, there shall be paid 1d. for every pound weight or under. *§. 1.*

The said duties to be under the management of the commissioners of the stamp duties. *§. 5.*

Provided, that the said duties shall not extend to any drugs or other preparation or composition used or applied as medicines, charged with a stamp duty by 25 G. 3. c. 79. Nor to any common soap imported into, or made in *Great Britain*, unmixed with any such sweets or perfumes as aforesaid. *§. 2, 3.*

Drugs and common soap excepted.

And every person making, vending, or exposing to sale, any such wares or articles, subject to the aforesaid duties, shall apply to the said commissioners for covers or labels to be affixed to such articles as aforesaid, upon which the said commissioners shall cause some mark to be put to denote the said duties, and the rate thereof; which they shall deliver to such licensed vender, on payment of the duties due thereon; and every such packet or other article, shall have such cover fastened thereto, before the same shall be vended or exposed to sale, in such manner as the said commissioners shall direct. And if any person shall vend, or expose to sale, or receive any thing by way of exchange for any of the articles aforesaid, without having such cover affixed thereto, stamped as aforesaid, or with a stamp of less value than as before directed, he shall forfeit 5l. for every such offence. *§. 10, 11.*

Stamped covers to be affixed.

Provided, that it shall be lawful for any person being a maker of hair powder, having made entry according to law, the price whereof shall not exceed 2s. a pound, and packed in any quantity not under 224 l. weight at the least, to sell the same to any person dealing in hair powder, and duly licensed as aforesaid, without any such stamped cover as aforesaid being affixed thereto. But every such maker shall keep a book, in which he shall enter an account of all hair powder sold by him without stamps, with the day on which the same was sold, and the name of the person to whom sold; which book the said officers may inspect

Exceptions.

spect in the day time, and take copies thereof: and every person offending in any of the particulars above-mentioned, shall forfeit 20l. for every such offence. *f. 12, 13.*

Provided also, that the following articles may be kept and exposed to sale, in bulk or otherwise, without any stamped cover affixed thereto, until the time of the actual sale thereof, if such cover be *bona fide* at the time of such sale affixed thereto, (*viz.*) almond paste, almond powder, bears grease, cold cream, Italian square hard soap, Naples soft soap, perfumed and coloured hair powder above the price of 2s. a pound, rouge in pots, and washballs of all sorts. *f. 17.*

Persons fraudulently using covers.

And if any person shall fraudulently take off any such stamped cover from any such packet or article after the same hath been sold; or affix to any packet or article any such cover so fraudulently cut off as aforesaid; or shall sell or expose to sale any such wares or articles with such cover so fraudulently cut off as aforesaid; or shall buy or sell, or give or receive in exchange any such cover which hath been before used, in order to be again made use of; or shall wilfully and knowingly buy or sell, or give or receive in exchange any such wares or articles with such cover affixed thereto; every such person so offending shall forfeit 10l. *f. 14, 15.*

Notice to be given of places for keeping or vending.

And every person who shall vend, or expose to sale, any such wares or articles liable to the said duties, shall, before obtaining such licence, give notice in writing at the next stamp office, of the particular shop, room, or place where such wares or articles are intended to be kept and sold, and also like notice as often as he shall change such place; and any officer may enter in the day time any such shop, room, or place, whereof such notice hath been given, and search the several wares and articles so kept ready for sale, and examine whether they have a proper cover affixed thereto; and if any be found without such cover, or the same be of less value than is by this act required, he shall affix to such articles a stamped cover as herein-before directed: and if such owner, or person having the care or custody of such wares, shall not pay upon demand such sums as shall be due for such stamps, he shall forfeit 5l. *f. 17.*

Penalty.

And if any person licensed as aforesaid shall vend or expose to sale any of the articles subject to the duties by this act imposed, in any other shop, house, or place, than such as are described in such notice, he shall forfeit 5l. *f. 20.*

Exportation.

But nothing herein contained, shall extend to charge any such articles or wares, with any of the duties by this act imposed.

posed, which shall be sold by any person duly licensed, *bona fide* for exportation. *f.* 21.

If any person shall obstruct any officer in the execution of this act he shall forfeit 20l. *f.* 18.

Obstruſting
officers.

Persons convicted of any offence whereby any pecuniary penalty is incurred, shall forfeit their licence, and shall not have another granted, without giving 100l. bond not to offend again; and if convicted of a second offence, the bond to be double the penal sum contained in the former bond. *f.* 22.

Persons con-
victed ſhall for-
feit their li-
cence.

All pecuniary penalties by this act imposed, may be sued for in the courts at *Westminster*, half to the king, and half to him who shall sue, if within six months of such penalty having been incurred, otherwise the whole shall go to the king. Or the same may be recovered before any neighbouring justice, on complaint made within six months after the offence is committed, who may summon the party accused, and also the witnesses, and upon confession, or oath of one witness, give judgment therein, and levy such penalty by distress, and if not redeemed within three days, may cause the same to be sold, rendering to the party the overplus (if any); the same to be distributed half to the king, and half to the informer: and for want of sufficient distress, the offender shall be committed to prison for three months, unless such penalty be sooner paid. And if any person shall think himself aggrieved by the judgment of such justice, he may, on giving security to the amount of such penalty and costs, in case such judgment be affirmed, appeal to the next sessions, whose determination shall be final; and they may award costs as to them shall seem meet. *f.* 26, 27, 28, 29.

Penalties how to
be recovered.

Appeal.

Provided nevertheless, that where such justice shall see cause, he may mitigate such penalties, so as not to reduce the same lower than one moiety, over and above the costs. *f.* 32.

Mitigation.

Witnesses not appearing, having been duly summoned, without reasonable cause, to be allowed by such justice, shall forfeit 40s. to be recovered in like manner. *f.* 30.

Witnesses not
appearing.

[N. B. There is a schedule in the act, of the several articles subject to the duties; and also a form of conviction, but it is thought unnecessary to insert the same at large.]

Perjury and subornation.

- I. Of perjury and subornation by the common law.
- II. Of perjury and subornation by the statute of the 5 El.
- III. Of matters common to them both.

I. Of perjury and subornation by the common law.

Perjury at the common law.

PERJURY by the common law seemeth to be a wilful false oath, by one who being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter material to the point in question, whether he believed or not. 1 Haw. 172. 3 Inst. 164.

Must be wilful.

Wilful] The false oath alledged against him, should be proved to be taken with some degree of deliberation; for if upon the whole circumstances of the case it shall appear probable, that it was owing rather to the weakness than perverseness of the party, as where it was occasioned by surprise, or inadvertency, or a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury. 1 Haw. 172.

Swearing the truth not knowing it to be so, is perjury.

False] It is said not to be material, whether the fact which is sworn, be in itself true or false; for however the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears to it, his offence is altogether as great as if it had been false inasmuch as he wilfully swears that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to induce those before whom he swears, to proceed upon the credit of a deposition which any stranger might make as well as he. 1 Haw. 175.

Oaths administered by improper persons, not perjury.

Being lawfully required] It seemeth clear, that no oath whatsoever, taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths of a publick nature, without legal authority; or before those who are legally authorized to administer some kinds of oaths, but not those which happen to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, — can amount to perjuries, but are altogether idle and of no force. 1 Haw. 174.

In any judicial proceeding] For though an oath be given by him that hath lawful authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury, because such oaths are general and extrajudicial; but it serves for aggravation of the offence. Such are, general oaths given to officers or ministers of justice, the oath of fealty and allegiance, and such like. Thus if an officer commit extortion, it is against his general oath, but yet not perjury, because not in a judicial proceeding: but when he is charged with extortion, the breach of his oath may serve for aggravation. 3 *Inst.* 166.

Must be taken, in a judicial proceeding to make it perjury.

If a person calleth another *perjured* man, he may have his action upon his case, because it must be intended contrary to his oath in a judicial proceeding; but for calling him a *perjured* man, no action doth lie, because the forswearing may be extrajudicial. *id.*

Swears absolutely] For the deposition must be direct and absolute; and not, as he thinketh, or remembreth, or believeth, or the like. *id.*

Swearing absolutely.

Yet in *Pidley's case*, T. 1784, it was held by Ld. Mansfield, that a man may be indicted for perjury, in swearing that he *believes* a fact to be true, which he must *know* to be false. *Leach's Cr. Law*, 142, 2d edit.

In a matter material to the point in question] For if it be not material, then though it be false, yet it is no perjury, because it concerneth not the point in issue, and therefore in effect it is extrajudicial. 3 *Inst.* 167.

Must be material to the point in question.

But it is not necessary that it appear *to what degree* the point in which a man is perjured was material to the issue; for if it is but circumstantially material, it will be perjury. L. *Raym.* 258.

Much less is it necessary that the evidence be sufficient for the plaintiff to recover upon; for in the nature of the thing, an evidence may be very material, and yet it may not be full enough to prove directly the point in question. L. *Raym.* 839.

Whether he be believed or not] It hath been holden, not to be material upon an indictment of perjury at common law, whether the false oath were at all credited, or whether the party in whose prejudice it was intended, were in the event any way aggrieved by it or not; inasmuch as this is not a prosecution grounded on the damage of the party, but on the abuse of publick justice. 1 *Haw.* 177.

Not material whether believed or not.

Subornation of perjury, by the common law, seems to be an offence, in procuring a man to take a false oath, amounting to perjury, who actually taketh such oath. *id.*

Subornation at common law.

But

Perjury and subornation.

But it seemeth clear, that if the person incited to take such an oath do not actually take it, the person by whom he was so incited is not guilty of subornation of perjury; yet it is certain, that he is liable to be punished, not only by fine, but also by infamous corporal punishment. *id.*

Punishment of perjury and subornation by the common law.

The punishment of perjury, and subornation of perjury by the common law, is restrained by the statute of the 5 *El.* hereafter following; that it shall not be less than is inflicted by that statute.

Power of justices of the peace therein,

Mr. *Hawkins* says, it hath been of late settled, that justices of the peace have no jurisdiction over perjury at the common law; the principal reason of which resolution, he says, as he apprehended, was, that in as much as the chief end of the institution of the office of these justices was, for the preservation of the peace against personal wrongs and open violence, and the word *trespass* (in the commission) in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only, or at the most to extend to such other offences only, as have a direct and immediate tendency to cause such breaches of the peace: as libels and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw.* 40.

And in the case of *K. and Bainton, E. 11 G. 2.* An indictment at the quarter sessions for perjury at the common law was quashed for want of jurisdiction; and was said to have been done so about three years before, in the case of *K. and Westinefs.* Str. 1088.

II. Of perjury and subornation by the statute of the 5 *El.*

Perjury and subornation on the 5 *El. c. 9.*

As to subornation of perjury, in the first place, Every person who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, by any writ, action, bill, complaint, or information, touching any lands, tenements, or hereditaments, or any goods, chattels, debts, or damages; in chancery, or in any court of record, leet, ancient demesne court, hundred court, court baron, or court of flannery; or shall unlawfully and corruptly procure or suborn any witness which shall be sworn to testify in perpetuam rei memoriam,——shall forfeit 40*l.* half to the king, and half to the partygrieved who shall sue for the same. And if he has not lands or goods worth 40*l.*, he shall be imprisoned half a year, and stand on the pillory one whole hour in some market town next adjoining to the place where the offence was committed, in open market there, or in the

the market town itself where the offence was committed. And he shall be disabled to be a witness in any court of record.

And as to perjury, If any person either by subornation or otherwise, shall wilfully and corruptly commit any wilful perjury, by his deposition in any of the courts before mentioned, or being examined ad perpetuam rei memoriam; he shall forfeit 20*l.* in like manner, and be imprisoned six months; and if he has not goods worth 20*l.* he shall be set on the pillory in some market place within the shire, city, or borough, where the offence was committed, by the sheriff or head officer respectively, and have both his ears nailed. And he shall be for ever disabled to be a witness in any court of record.

And the judge of the court where the perjury shall be, and the judges of assize, and justices of the peace in sessions, may inquire, hear, and determine thereof, by inquisition, presentment, bill, or information, or otherwise.

But this act shall not extend to any ecclesiastical court.

Also this statute shall not restrain the authority of any judge having absolute power to punish perjury before the making thereof, but that every such judge may proceed in the punishment of all offences punishable before the making of the said statute, in such wise as they might have done, and used to do, to all purposes, so that they set not upon the offender less punishment than is contained in the said statute. 5 El. c. 9.

Any witness] If the defendant perjureth himself in his answer, in the chancery, exchequer chamber, or the like, he is not punishable by this statute; for it extendeth but to witnesses. 3 Inst. 166.

But he is punishable for the same by indictment at the common law. Bur. Mansf. 1189.

By any writ, action, bill, complaint, or information] It hath been resolved, that these words are to be extended to the latter clause concerning perjury, as well as to this concerning subornation; because it cannot well be intended, that the makers of the act, who inflict a greater penalty on subornation of perjury, than on the perjury itself, should mean to extend the purview of the law in relation to what they esteemed the lesser crime, farther than in relation to that which they esteemed the greater. 1 Haw. 179. 5 Co. 99.

But it is to be observed, that perjury or subornation in an action depending by indictment, are not within this statute; but only in an action depending by writ, action, bill, complaint, or information. 3 Inst. 164.

Half to the party grieved] It hath been collected from this clause, that no false oath is within the meaning of this statute, which doth not give some person a just cause of complaint: And upon this ground it hath been said, that he

he who swears a thing which is true, but not known by him to be so, is not within this statute; because howsoever heinous his offence may be in its own nature, yet when it proves in the event to be in maintenance of the truth, it cannot be said to give him a just cause of complaint, who would take advantage against another from his want of legal evidence to make out the justice of his cause. Also from the same ground it seemeth clearly to follow, that no false oath can be within the statute, unless the party against whom it was sworn suffered some kind of disadvantage by it; for otherwise it cannot be said, that any one was grieved by it: And therefore that in every prosecution upon this statute, it must appear upon the trial that there was such a suit depending, wherein the party might be prejudiced in the manner supposed. 1 Haw. 181.

Either by subornation or otherwise] It is not necessary to set forth in the indictment, whether the party took the false oath through the subornation of another, or without any such subornation, these words being only superfluous. 1 Haw. 179.

Wilfully and corruptly] These words are necessary in an indictment or action on this statute, and cannot be supplied by adding *against the form of the statute*, or by concluding *and so a wilful and corrupt perjury did commit*. 1 Haw. 178.

Justices in sessions] And one justice (Mr. Dalton says) may bind the offender over to the sessions. Dalt. c. 70.

But because the prosecution upon this statute is more difficult than by indictment at the common law, offenders are seldom prosecuted upon this statute, especially at the sessions: and it seems generally the safer way to proceed by indictment at the common law, at the assizes, or in the court of king's bench.

Shall not restrain] From this it seemeth undoubtedly to follow, that the court of king's bench, &c. proceeding upon an indictment or information of perjury or subornation of perjury at the common law, may not only set discretionary fine on the offender, but also condemn him to the pillory, without making any inquiry concerning the value of his lands or goods. 1 Haw. 178.

III. Of matters common to them both.

Judges may direct prosecution for perjury.

The judge of assize (sitting the court or within 24 hours after) may direct any witness, if there shall appear to him a reasonable cause, to be prosecuted for perjury and may assign the party injured, or other person under taking

taking such prosecution, counsel, who are to do their duty *gratis*: And such prosecution so directed shall be carried on without any duty or fees whatsoever. And the clerk of assize, or other proper officer of the court, shall give *gratis* to the party injured, or prosecutor, a certificate of the same being directed, together with the names of of the counsel assigned him: Which certificate shall be sufficient proof of such prosecution being directed; provided that no such direction or certificate shall be given in evidence on the trial.

23 G. 2. c. 11. s. 3.

And in every information or indictment for wilful and corrupt *perjury*, it shall be sufficient to set forth the substance of the offence, and by what court, or before whom the oath was taken (averring such court or person to have a competent authority to administer the same), together with the proper averment or averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record or proceedings either in law or equity (other than as aforesaid), or the authority of the court, or person before whom the perjury was committed. s. 1.

And in informations or indictments for *subornation* of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence, without setting forth any part of the record or proceedings, or the commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed. s. 2.

The court generally will not quash an indictment for a crime of so enormous a nature as perjury, for insufficiency in the caption or body of it, but will oblige the defendant either to plead or demur to it. 2 *Haw.* 258.

To convict a man of perjury, a probable evidence is not enough: but it must be a strong and clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath. 10 *Mod.* 194.

And the party prejudiced by the perjury, shall not be admitted to prove the perjury. *L. Raym.* 396.

And for a further punishment of perjury or subornation of perjury, it is enacted by the 2 G. 2. c. 25. (which act is made perpetual by the 9 G. 2. c. 18.) that besides the punishment already inflicted, the judge may order the offender to be sent to the house of correction, not exceeding 7 years, to be kept to hard labour; or otherwise to be transported for any term not exceeding 7 years.

On prosecution for perjury, it shall be sufficient to set forth the substance of the offence.

Likewise on a prosecution for subornation.

Insufficient indictment not quashed without pleading or demurrer. Evidence.

Further punishment of perjury or subornation.

Certiorari.

It seems that the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment of perjury: for such crime deserves all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution. 2 Haw. 287.

Perjured person
not to be a juror
or witness.

A person convicted of perjury is disabled from being a juror. 2 Haw. 417. Or a witness. 2 Haw. 433.

Quakers.

Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury. 8 G. c. 6. s. 2.

Perry. See Cruise.

Petition.

BY the 13 C. 2. c. 5. No person shall solicit above 2 hands, to any petition to the king, or either house of parliament, for alteration of matters established by law in church or state, unless the matter thereof hath been consented to by three or more justices of the county, or by the major part of the grand jury at the assizes or sessions; or if arising in London, by the lord mayor, aldermen, and common council; nor shall present any such petition accompanied with more than ten persons, on pain of a fine not exceeding 100l. and three months imprisonment, or conviction at the assizes or sessions in six months, and proved by two witnesses.

But this shall not extend to debar any persons (not above ten in number), to present any complaint to any member of parliament after his election, and during the continuance of parliament, or to the king, for any remedy to be thereupon had; nor to any address to the king by the parliament.

Petit larceny. See Larceny.

Petit treason. See Treason.

Pewter and other metals.

Imported.

NO person shall buy, or take by exchange, (or otherwise take into or within this realm to the intent to sell the same, 33 H. 8. c. 4. s. 7.) any wares made out of the realm, of tin or mixed with tin, as dishes, sawyers

Ba

Knives, spoons, or any other thing made of tin or pewter; on pain of forfeiting the same, and the value thereof, half to the king, and half to the finder. 25 H. 8. c. 9. f. 1.

And the masters and wardens of the pewterers, and where there are none, the head officer of the town may appoint searchers, who may seize the same. f. 2.

And persons interrupting or disturbing the said seizure shall forfeit 5l. half to the king, and half to him that shall sue. 33 H. 8. c. 4. f. 8.

No person shall cast or work any pewter vessel or brass, but that it be as good fine metal as the pewter and brass wrought in *London*, and as by the statutes of the same ought to be; on pain of forfeiting the same, half to the king and half to the finder. But this not to extend to brass or pewter in the possession of any person, other than the worker, or such as have the same to sell, and being of the crafts or mysteries. 19 H. 7. c. 6.

Fineness in making.

And no person shall make any hollow wares of pewter, to wit, salts and pots made of pewter called ley-metal, but after the assize of pewter and ley-metal within *London*; and the makers shall mark them with their own mark, that they may avow the same by them wrought; and the same not sufficiently made and wrought, and not marked, found in the possession of the maker or seller, shall be forfeited; and if the same be sold, the maker shall forfeit the value thereof, half to the king, and half to the finder or searcher. *id.*

And the master and wardens of the craft of pewterers, and where there are none such, the head and governors of the city or borough, may appoint searchers; and the justices at *Michaelmas* sessions shall appoint two persons, having experience therein, to search within the county. And of all such unlawful pewter or brass as they shall find, half shall be to the king, and half to the searchers. *id.*

And in default of the master and wardens not searching, any person having sufficient knowledge in the said occupation, by oversight of the mayor or other head officer of cities or boroughs, may search. *id.*

If any untrue metal or workmanship of tin or pewter be found in any wares brought to be sold, the mayor of *London*, and the master and wardens of the pewterers, may search the same in the said city; and in all other cities and towns where there are wardens, the mayors and wardens shall have like authority; and where there are no wardens, then the head officers of cities or towns shall appoint searchers; and if such new wares wrought of tin and pewter be found defective, and in the possession of the seller,

Offering to sale;

the person putting them to sale shall forfeit the same, half to the king, and half to the searcher or finder. 4 H. 8.

c. 7. f. 7.

Selling, where.

No person using the crafts of pewterer and brazier, shall sell or change any pewter or brass, at any place, but only in open fair or market, or in his own dwelling house, except he be desired by the buyer of such ware; on pain of 10l. half to the king, and half to him who shall seize or sue. 19 H. 7. c. 6. 25 H. 8. c. 9. f. 6.

Falſe weights.

Persons using the buying and selling of pewter, or brass, who shall occupy any false beams or weights, and every person using the same, shall forfeit 20s. half to the king, and half to him that shall sue; and also the beams to him that shall seize them. 19 H. 7. c. 6.

And if the offender be not sufficient to pay the forfeiture, the mayor, or other head officer, where he shall be found, shall put him in the stocks, and so keep him till the next market day next adjoining, and in the market place put him in the pillory all the market time. *id.*

Exporting.

No person shall carry over sea, any brass, copper, latten, bell metal, pan metal, gun metal, nor shroff metal, whether it be clean or mixed (tin and lead only excepted); on pain of forfeiting double the value thereof (and 10l. for every thousand weight, 2 & 3 Ed. 6. c. 37.) half to the king, and half to him that shall sue. 33 H. 8. c. 7.

Pheasants. See Game.

Physicians.

Recufants not to praſtiſe phyſick.

NO recusant convict shall practise physick, nor use the trade of an apothecary, on pain of 100l. 3 J. c. 5. f. 8.

Apothecary exempted from offices.

Apothecaries within London and seven miles thereof, and also apothecaries in any other place, who have served seven years apprenticeship, shall be exempted from the office of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put on any jury or inquest. 6 W. c. 4.

Surgeons exempted from offices.

By the 5 H. 8. c. 6. Surgeons shall be discharged of the constableness, watch, and all manner of office bearing any armour, and also of all inquest and juries within London.

And

And by the 18 G. 2. c. 15. All freemen of the surgeons company in *London*, shall be exempted from the office of constable, scavenger, overseer of the poor, and other parish, ward, and leet offices, and from serving on juries and inquests. *f. 10.*

And Mr. *Hawkins*, speaking of the former of these statutes, says, it seems that by the equity thereof, and the ancient custom of the realm, all surgeons have been allowed the like privilege; that is, whether in *London* or elsewhere. *2 Haw. 64.*

By the 32 H. 8. c. 40. The president of the commonalty and fellowship of the faculty of physick in *London*, and the commons and fellows of the same, shall be discharged of watch and ward there, and shall not be chosen constable, or any other officer. *f. 1.*

Whether physicians are exempted from offices.

Yet it seems to have been holden, that the equity of this act, doth not extend to other physicians not mentioned in it; perhaps for this reason, because physicians have no such special custom for their discharge, as surgeons are said to have. *2 Haw. 64.*

And it seemeth that a practising physician, being chosen constable in pursuance of a custom in respect of his lands in a town, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private; yet if he be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it, perhaps he may be relieved by the king's bench. *2 Haw. 63.*

All justices, mayors, sheriffs, bailiffs, constables, and other officers in *London*, shall assist the president of the college of physicians, and persons by them authorised, in searching for faulty apothecary wares. *1 Mar. sess. 2. c. 9. f. 6.*

Searching for drugs.

If a physician gives a person a potion without any intent of doing him any bodily hurt, but with intent to cure or prevent a disease, and contrary to the expectation of the physician it kills him, this is no homicide; and the like of a surgeon. And I hold their opinion (says *L. Hale*) to be erroneous, that think if he be no licensed surgeon or physician, that occasioned this mischance, that then it is felony; for physick and salves were before licensed physicians and surgeons; and therefore if they be not licensed according to the statute of the 3 H. 8. c. 11. or 14 H. 8. c. 5. they are subject to the penalties in the statutes; but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. These opinions therefore may serve to caution ignorant people not to

Physician killing a patient.

be too busy in this kind in tampering with physick, but are no safe rule for a judge or jury to go by. 1 H. H. 429.

Pickpockets. See Larceny.
Pigeons. See Game.

Pillory and tumbrel.

Pillory what.

PILLORY (in Latin, *collistrigium*, from the person's neck being put between two boards) is a very ancient punishment in this kingdom, and was used heretofore by the Saxons. 3 *Inst.* 219.

The word *pill* is common to all the *European* languages, and signifies to spoil, plunder, or (as we say) to *pillage*. And *pillory* (which we have immediately from the *French pillorie*) hath been improperly applied to denote the mode of punishment, whereas it signifies the *offence*, as *pillieur* signifies the offender. *Barrington*. 30.

Tumbrel what.

The *tumbrel* seemeth to have been anciently the same with the *ducking stool*; an engine for the punishment of scolding women, by ducking them over head and ears in water, and especially in muddy or stinking water, according to the etymology of L. Coke, who tells us, that the word *tumbrel* signifieth a dung cart. *Lamb.* 61, 3 *Inst.* 219.

Who shall find them.

Every one that hath a leet or market, ought to have a pillory and tumbrel to punish offenders; and it seems that a leet may be forfeited for not taking care to have a pillory and tumbrel. 3 *Inst.* 219. 2 *Haw.* 75.

Infamy of the punishment.

They that have been adjudged to the pillory or tumbrel, are so infamous, that they shall not be received to be jurors or witnesses. 3 *Inst.* 219.

Caution in inflicting it.

And for that the judgment to the pillory or tumbrel doth make the delinquent infamous, the justices of the peace should be well advised before they give judgment of any person to the pillory or tumbrel, unless they have good warrant for that judgment therein. Fine and imprisonment, for offences fineable by them, is a fair and sure way. 3 *Inst.* 219.

Inflicted by several statutes.

But by several statutes the punishment of the pillory is specially ordained; in which cases the directions of the said statutes respectively are to be observed.

Plague.

Plague.

ALL vessels, persons, and goods coming from any place, from whence the king, with the advice of his privy council, shall judge it probable that the infection may be brought, shall be obliged to make their quarantine in such places, for such time, and in such manner as shall be directed by him, or by his order made in council, and notified by proclamation, or published in the gazette. 26 G. 2. c. 6. f. 1. Quarantine enjoined.

And when the king shall make any orders concerning quarantine, and notify the same by proclamation, or in the gazette, the same shall be publickly read the next Sunday, and the first Sunday in every month afterwards (during the time such orders shall continue) immediately after prayers, in all places set apart for divine worship, within such places as shall be specified in such proclamation or orders. *id.* f. 20. Orders for quarantine to be read in churches.

And the justices of the counties adjoining, or one of them, shall forthwith, when quarantine shall be appointed, cause watches to be kept by day and night, in the most proper and convenient place, within the several adjacent parishes; who shall not permit any person whatsoever to come on shore from, or go on board any ships under quarantine, except only such as shall have the charge of seeing the quarantine duly performed, or as shall be licensed by such person having charge of the quarantine. 9 An. c. 2. Watchmen to be appointed.

And if any superintendant of the quarantine, or watchman, shall neglect his duty, he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. f. 17.

And if the plague shall appear on board any ship, being to the northward of *Cape Finisferre*, the master shall immediately proceed to the harbour of [*St. Helen's Pool*, between the uninhabited islands of *St. Helen's Tzan*, and *North Wit-bell*, or to such other place as his majesty by advice of his privy council shall appoint; 29 G. 2. c. 8.] where he shall make known his case to some officer of the customs, who shall immediately acquaint some custom house officer of some near port of *England*; who shall with all possible speed send intelligence thereof to a secretary of state, and the ship shall remain there till his majesty's pleasure be known; nor shall any of the crew go on shore. Masters of ships to give notice.

But if he shall not be able to make the islands of *Scilly*, or shall be forced by weather or otherwise to go up either of the channels, he shall not enter any port, but remain

in some open road, till he receives orders from his majesty or his privy council; and shall prevent any of the crew from going out of the ship, and avoid all intercourse with other ships or persons. And the said master or any other person on board, who shall be disobedient herein, shall be guilty of felony without benefit of clergy; and may be tried where the offence shall be committed, or where he shall be apprehended. 26 G. 2. c. 6. §. 2.

Vessels to be
examined.

And when any county or place is infected, or when any order shall be made by the king concerning quarantine, as often as any vessel shall attempt to enter into any port, the principal officer of the customs there, or such person as shall be authorised to see quarantine performed, shall go off, or cause some other person to go off to such vessel; who shall at a convenient distance demand of the commander, the name of the ship; the name of the commander; at what place the cargo was taken on board; what place the vessel touched at in her voyage; whether such places, or any, and which, were infected with the plague; how long she hath been in her passage; how many persons were on board when she set sail; whether any, and what persons, during the voyage, have been or are infected; how many died in the voyage, and of what distemper; what vessels he, or any of his company with his privy, went on board, or had any of their company come on board his ship, and to what place they belonged; and also the true contents of his lading, to the best of his knowledge: And if it shall appear on such examination, or otherwise, that any person on board is infected, or that such ship is obliged to perform quarantine; the officers of any of his majesty's ships of war, or of any forts or garrisons, and all other his majesty's officers whom it may concern, and others whom they shall call to their assistance, shall, on notice thereof, oblige such ship to repair to the place appointed for quarantine, be it by firing of guns, or other force: And if such vessel shall come from any place infected, or have any person on board infected, and the master shall conceal the same, he shall be guilty of felony without benefit of clergy; and if he shall not make a true discovery in any other of the particulars, he shall forfeit 200l. half to the king, and half to him that shall sue. §. 3.

Officer neglect-
ing.

And if any officer of the customs, or other officer, shall neglect his duty herein; he shall forfeit his office and 100l. in like manner. §. 11.

Master to deliver
his credentials.

And the master, after his arrival at the place of quarantine, shall deliver on demand to the chief officer appointed

pointed to see quarentine duly performed, such bill of health and manifest as he shall have received from any *British* consul, together with his log-book and journal; on pain of 500 l. in like manner. *f. 4.*

And all persons, liable to perform quarentine, shall be subject to such orders as they shall receive from the officer authorised to see it performed; who shall have power to enforce obedience, and in case of necessity to call others to their assistance. *f. 9.*

Obedience enforced.

And any officer of the customs, or others, directed to take care of the quarentine, may seize any boat belonging to such vessel, and detain the same till quarentine be performed. *9 An. c. 2.*

Ships boats may be seized.

And if the commander of the ship shall go himself, or permit any seaman or passenger to go on shore, or on board any other vessel, during the quarentine, without licence of the person having charge of the quarentine; the ship and tackle shall be forfeited to the king. *id.*

Penalty of quitting the ship.

And if any person shall come on shore, or go aboard any other ship; the persons appointed for seeing quarentine duly performed, may compel him to return and continue during the quarentine: And such person so leaving such ship, and being thereof (after expiration of the quarentine) convicted by oath of one witness, before one justice near, shall forfeit not exceeding 20 l. to be paid immediately to such justice, who may reward the informer thereout not exceeding a third part, and pay the remainder (charges deducted) to the poor of the parish where the conviction shall be; and in default of payment, he may commit him to the house of correction, to be kept to hard labour not exceeding one month. *id.*

And by the 26 G. 2. c. 6. If the master shall quit, or knowingly permit any person to quit the ship, by going on shore, or on board any other vessel, before the quarentine shall be performed, unless in such cases as shall be permitted by the orders concerning quarentine; or if he shall not, in convenient time after notice, cause the vessel and lading to be conveyed to the place appointed for quarentine, he shall forfeit 500 l. half to the king, and half to him that shall sue: And if any person shall so quit such ship, all persons by any kind of force may compel him to return; and he shall for such offence be imprisoned six months, and forfeit 200 l. half to the king, and half to him that shall sue. *f. 5.*

And if any person shall go on board, and return from any ship, during the quarentine, without such licence; he may be compelled by the persons appointed as aforesaid,

Persons going aboard.

to return and continue on board during such quarentine; and the master of such ship shall there keep and maintain him. 9 *An. c. 2.*

In what case
small vessels
shall not be al-
lowed to sail.

When any part of *Great Britain, Ireland, Guernsey, Jersey, Alderney, Sark, or Man, France, Spain, Portugal,* or the low countries shall be infected, the king by proclamation may prohibit all small boats and vessels under the burden of 20 tons, from sailing out of port, till security be first given by the master, to the satisfaction of the principal officer of the customs, or chief magistrate of the port, by bond to the king with sureties, in the penalty of 300 l. that he shall not go to or touch at any place mentioned in the proclamation; and that the master and every mariner and passenger shall, during the time aforesaid, not go on board any other vessel at sea; and that he shall not permit any person to come on board such boat or vessel at sea; and shall not receive any goods out of any other vessel; for which bond no fee shall be taken. And if such boat or vessel shall sail before such security given, the same, together with the tackle and furniture, shall be forfeited to the king; and the master and every mariner therein, being thereof convicted, on his appearance or default, on oath of one witness, by one justice where the offender shall be found, shall forfeit 20 l. half to the informer, and half to the poor of the parish where the offender shall be found by distress; and for want of sufficient distress to be committed to prison for three months. 26 *G. 2. c. 6.*
f. 19.

Lazarets to be
appointed.

Whenever the king, with the advice and consent of parliament, shall direct lazarets to be provided, for receiving of persons obliged to perform quarentine, or for airing of goods, it shall be lawful to erect the same, either in any waste grounds or commons, or where there are not sufficient, in the several grounds of any person whatsoever, not being a house, park, garden, orchard, yard, or planted walk, or avenue to a house, paying for the same as shall be agreed on between the persons interested, and any two persons appointed by the king under his sign manual; and if they cannot agree, then the said two persons shall, 30 days before the sessions, give to the occupier a notice in writing, describing the quantity of ground, and purporting that the consideration for the same will be settled by a jury at such sessions. And the justices there, on proof of such notice shall charge the jury which shall attend there (or some other jury to be then and there impanelled and returned by the sheriff without fee) and cause to be sworn, well and truly to assess the value of such grounds, to whom
the

the parties may have their lawful challenges; and the verdict of the said jury, and the judgment of the justices thereupon, shall be conclusive, and finally bind all parties; and thereupon the king shall hold such grounds for such term as he shall judge necessary, paying for the same such rent or other consideration as shall be so assessed. 26 G. 2. c. 6. f. 6. And by the 12 G. 3. c. 57. the lords of the treasury may contract for an absolute purchase of such lands, messuages, and tenements, to be vested in the crown unalienably: And if the parties cannot agree, the price shall be settled at the sessions as aforesaid, on giving like notice to the owner.

And the officers authorised to put in execution such orders as aforesaid, shall cause all persons obliged to perform quarentine, and all goods comprized in such orders, to repair or be conveyed to some of the said lazarets, or to such other places as shall be provided according to such orders. 25 G. 2. c. 6. f. 7.

And if any person shall refuse or neglect to repair, within convenient time after notice, to the lazaret or other place appointed, or shall escape or attempt to escape from thence, before quarentine performed; the watchmen, and other persons appointed to see quarentine performed, by force may compel him to repair or return thither: and every person so refusing or neglecting to repair thither, and also every person actually escaping, shall be guilty of felony without benefit of clergy. *id.* f. 8.

And if any person not infected, nor liable to perform quarentine, shall enter any lazaret, or other such place, and shall return or attempt to return, unless as permitted by such orders; the watchmen, or other persons appointed, by force may compel him to return and perform quarentine: and if he shall actually escape before he hath performed the same, he shall be guilty of felony without benefit of clergy. *id.* f. 10.

Persons entering lazarets, not to return till quarentine performed.

And the mayor, head officers, and justices of the peace of every city, borough, town corporate, and places privileged, or any two of them, may assess every inhabitant, and all houses of habitation, lands, tenements, and hereditaments, for the reasonable relief of persons infected with the plague, or inhabiting in infected houses, and levy the same by warrant; and if the party to whom the warrant is directed shall not find any goods to levy the same, then upon return thereof, they shall by warrant cause the person to be arrested, and committed to gaol till he shall pay. 17. c. 31. f. 2, 3.

Assessment for relief of persons infected.

And if the inhabitants of such place shall find themselves

unable to relieve all such persons, then on certificate thereof by the said magistrates or two of them, to the justices of the county of or near the said city or other place, or to two of them, they may tax the inhabitants of the county within five miles of the place infected, at such weekly sums as they shall think reasonable, to be levied by their warrant by sale of goods, and in default thereof, by imprisonment as aforesaid. *f. 4.*

And if the infection shall be in a town where there are no justices, or in a village or hamlet; then two justices of the county may assess the inhabitants of the county, within five miles of the place infected, at such weekly sums as they shall think fit, for the reasonable relief of persons infected; to be levied by their warrant by sale of goods, and in default thereof by imprisonment as aforesaid. *f. 5.*

All which said taxes shall be certified at the next quarter sessions, for such town or county respectively; and there they may order the same to continue, or be enlarged or extended to any other part of the county, or otherwise determined. *f. 6.*

Officer making default in levying the same, shall forfeit 10 s. to be employed to the charitable uses aforesaid. *f. 6.* But it is not said how this penalty shall be levied.

Searchers for
places infected.

And the justices, mayors, and other head officers may appoint within their limits searchers, watchmen, examiners, keepers, and buriers for the places infected; and give them directions, and swear them for the performance thereof. *f. 9.*

Secreting goods
under quaran-
tine.

If any person shall conceal from the officers of quarantine, or convey any letters or goods from any ship under quarantine, or from any lazaret; he shall be guilty of felony without benefit of clergy. 26 G. 2. c. 6. *f. 18.*

Damaging goods.

If any officer or other person shall imbezil or damage any goods performing quarantine, he shall pay treble damages with full costs. *f. 11.*

Discharge after
quarantine per-
formed.

After quarantine performed, and on proof thereof by the oaths of the master and two other persons of the ship, or by the oaths of two credible witnesses, before the custom, comptroller, or collector of that or the next port, or their deputies, or a justice near, and that the vessel and every such person are free from infection; and after producing a certificate thereof signed by the chief officer who superintended the quarantine; such officer of the customs, together with the said justice, shall give a certificate thereof (*gratis*), and thereupon the vessel and every such person shall be liable to no farther restraint. *f. 13, 14.*

And

And all goods liable to quarantine shall be opened and aired, as by such orders shall be directed; and after such order hath been complied with, and a certificate thereof given by the chief officer appointed to superintend the quarantine and airing of such goods, and proof made thereof by the oaths of two witnesses, before the customer, comptroller, or collector of the next port, or any of their deputies, or any justice living near; on certificate and return of such proof by such customhouse officer to the commissioners of the customs, they or two of them by their order shall discharge the same. *f. 15.*

And if any person shall take any fee for such oath, order, or certificate; he shall forfeit 100 l. half to the king, and half to him that shall sue. *f. 16.*

And if any superintendant of the quarantine, or watchman, shall in such case give a false certificate; he shall be guilty of felony without benefit of clergy. *f. 17.*

[Note; the abovementioned act of the 9 *An.* was repealed by the 7 *G. 1. c. 3.* but was revived by the 8 *G. c. 8.* which enacts, that neither the said statute of the 7 *G.* nor any thing therein contained, shall continue in force longer than *March 25, 1723.*]

Players.

EVERY person who shall for hire, gain, or reward, act, or cause to be acted, any play or other entertainment of the stage, or any part therein, if he shall have no legal settlement where he acts, without authority from the king or the lord chamberlain, shall be deemed a rogue and vagabond within the 12 *An.* (which act is repealed; but the same is re-enacted by the 17 *G. 2. c. 5.*) 10 *G. 2. c. 28. f. 1.*

Or otherwise he shall forfeit 50 l.; in which case he shall not also suffer as a vagrant. *f. 2.*

And if any play, or part thereof, be acted in any place where wine, ale, beer or other liquors shall be sold, the same shall be deemed to be acted for *gain, hire, and reward.* *f. 7.*

And no person shall for hire, gain, or reward, act or cause to be acted any new play, or any part therein, or any new part added to an old play, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain, 14 days before the acting, together with an account

count when and where it is intended to be acted, signed by one of the managers. *f. 3.*

And the lord chamberlain may prohibit the same as he thinks fit; and if any person shall act without such copy being sent, or against such prohibition, he shall forfeit 50*l.* and the licence of the playhouse shall be void.

And no person shall be authorised to act, except within the liberties of the city of *Westminster*, and where the king shall reside. *f. 5.*

But by the 28 *G. 3. c. 30.* It shall be lawful for the justices at the general or quarter sessions, at their discretion, to grant a licence to any person making application for the same by petition, for the performance of any such plays or entertainments of the stage as are or shall be represented at the licensed theatres in *Westminster*, or have been submitted to the inspection of the lord chamberlain as aforesaid, at any place within their jurisdiction, or within any city, town, or place, situate within the limits of the same, for any time not exceeding 60 days, to commence within the then next 6 months, and to be within such 4 months as shall be specified in the said licence, so as there be only one licence in use at the same time within the jurisdiction so given, and so as such place be not within 20 miles of *London* or *Westminster*; or 8 miles of any patent or licensed theatre; or 10 miles of the residence of the king; or of any place within the same jurisdiction, at which, within 6 months preceding, a licence under this act shall have been had and exercised; or within 14 miles of either of the universities; or within 2 miles of the outward limits of any city, town, or place, having peculiar jurisdiction; and so also as no licence under this act shall have been had and exercised at the same place within 8 months then next preceding. *f. 1.*

Provided, that no such licence shall be granted to be exercised within any city, town, or place, having peculiar jurisdiction, unless proof be made that the majority of the justices acting for such place, have at a publick meeting signed their consent; or unless an express condition be therein inserted, that the same shall not be valid until approved by the majority of the justices of such place at a meeting holden expressly for that purpose. *f. 2.*

Provided also, that no such licence shall be granted by the justices within any city, town, or place, unless notice shall have been given by the person applying for such licence, three weeks before such application, to the mayor, bailiff, or other chief civil officer of such place, of such intended application. *f. 3.*

All the said pecuniary penalties may be recovered in the courts at *Westminster*; or before two justices, by the oath of one witness, or confession, to be levied by distress; and for want of sufficient distress, the offender to be committed to the house of correction, not exceeding six months, to be kept to hard labour; or to the common gaol, not exceeding six months, without bail or mainprize: Persons aggrieved by order of the justices may appeal to the next sessions: The said penalties to be distributed, half to the informer, and half to the poor. 10 G. 2. c. 28. s. 6.

But by special acts of parliament playhouses are permitted to be erected in particular places.

Plate. See *Exrisc*.

Poison. - See *Homicide*.

Polygamy.

BIGAMY is, where a man has two wives successively; *Bigamy and polygamy.* Polygamy, where he hath several wives at the same time: but they are commonly confounded one with the other.

By the 1 Jac. c. 11. *If any person within his majesty's dominions of England and Wales, being married, shall marry any person, the former husband or wife being alive; every such offence shall be felony, and the person so offending shall suffer death as in cases of felony; and shall be tried in the county where he or she was apprehended, as if the offence had been committed in such county.*

Provided, that this shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas for seven years together:

Or whose husband or wife shall absent him or herself the one from the other, for seven years together, in any part within his majesty's dominions, the one of them not knowing the other to be living within that time:

Provided also, that this shall not extend to any person that shall be at the time of such marriage divorced by any sentence in the ecclesiastical court:

Or to any person where the former marriage hath been by sentence in the ecclesiastical court declared to be void and of no effect:

Nor to any person by reason of any former marriage had or made within age of consent,

Provided

Polygamy.

Provided also, that no attainer for this offence made felony by this act, shall work any corruption of blood, loss of dower, or disinheritance of heirs.

If any person within his majesty's dominions of England and Wales] If the first marriage was beyond sea, and the latter in England, the party may be indicted here, because the latter marriage makes the offence; but if the first marriage was in England, and the latter beyond sea, it seemeth that the offender cannot be indicted here, because the offence was not within the kingdom. *Kely. 79, 80.*

Being married] This extends to a marriage *de facto*, or voidable by reason of consanguinity, affinity, or such like; for it is a marriage in judgment of law until it be avoided; and therefore, though neither marriage be *de jure*, yet they are within this statute. *3 Inst. 88.*

But there must be actual proof of the marriage; for in this case the circumstances of cohabitation and reputation are not sufficient. *Bur. Mansf. 2057.*

Shall marry any person, the former husband or wife being alive] If a man marrieth a wife, and then marrieth another the former wife being living, and then such first wife dying he marrieth a third the second wife being living; this marrying of the third is not felony, because the marriage with such second wife was merely void: but otherwise it would have been if he had married the third, the first and true wife being living. *1 H. H. 693.*

Every such offence shall be felony] And such second marriage is merely void. *3 Inst. 88.*

And the person so offending shall suffer death as in cases of felony] Yet he shall have the benefit of clergy; the same being not excluded by express words. *3 Inst. 89.*

And shall be tried] The first and true wife is not to be allowed as a witness against the husband; but it seemeth clear, that the second wife may be admitted to prove the second marriage, being not so much as his wife *de facto*. *1 H. H. 693.*

In the county where he or she was apprehended] This is added only *cumulative*; for he may be indicted where the second marriage was, though he be never apprehended; and so be proceeded against to outlawry. *1 H. H. 694.*

Shall not extend to any person, whose husband or wife shall be continually remaining beyond the seas for seven years together] And in this case notice that he or she is living.

is not material, in respect to the commorancy beyond sea.
3 Inst. 88.

Beyond the seas] And this, although it be within the king's dominions; as in New England, or Ireland. 1 H. H. 693.

Or whose husband or wife shall absent him or herself the one from the other, for seven years together, in any part within his majesty's dominions, the one of them not knowing the other to be living within that time] So that in this case notice is material, and makes the offence. 3 Inst. 88.

Shall not extend to any person that shall be at the time of such marriage divorced by any sentence in the ecclesiastical court] And this is intended a divorce not a *vinculo matrimonii*, for then without the aid of any proviso either may freely marry; but it must be intended of divorces *a mensa et thoro*. 1 H. H. 694.

Nor to any person by reason of any former marriage had or made within the age of consent] If the man be above fourteen and the wife under twelve, or if the wife be above twelve and the man under fourteen, yet may the husband or wife so above the age of consent disagree to the espousals, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so it was resolved by the judges and civilians, T. 42 Eüz. in the King's Bench, in a writ of error between *Babington* and *Warner*. So as if either party be within age of consent, it is no former marriage within this act. 3 Inst. 89.

Pond. See Game.

Poor.

CONCERNING the binding and ordering of parish and other apprentices, see title Apprentices.

Concerning the filiation and maintenance of bastard children, see title Bastards.

Concerning the ordering of servants, and other workmen and labourers, see title Servants.

For these do fall in with this title, no further than as they happen to become poor: Upon which account, their settlements are here treated of; but nothing otherwise in particular concerning them.

It is to be noted in this place, that the statute of 22 G. 3. c. 83. establishes many new regulations with regard to the maintenance of the poor; but as that statute leaves it optional in any parish or other place whether they will adopt these regulations or continue in the present mode, it is judged requisite for the present to preserve this title unaltered, further than by inserting at the end of it an account of the said statute of 22 G. 3. which being, as it were, in its probationary state, remains as the subject of future consideration.

Justices although rated may act in several parochial matters.

But not in appeals.

It may be proper here to take notice of the 16 G. 2. c. 18. which enacts, That justices may do all things appertaining to their office, so far as the same relates to the laws for the relief, maintenance, and settlement of the poor; or to any laws concerning parochial taxes, levies, or rates, notwithstanding they are rated or chargeable with the rates within any place affected by such their acts. Provided, that this shall not empower any justice for any county at large, to act in the determination of any appeal to the sessions of such county, from any order, matter, or thing, relating to any such parish, township, or place, where such justice is so charged or chargeable.

Of this extensive title, it is proposed to treat in the following order: That is to say,

- I. *Concerning the appointment of overseers, with their duty thereupon.*
- II. *Of settlements.*
- III. *Of removals.*
- IV. *Of the poor rate, and other helps towards their relief.*
- V. *Of the relief and ordering of the poor.*
- VI. *Of the overseers account.*
- VII. *Penalty of overseers for the neglect of their duty.*
- VIII. *Indemnity of overseers in the performance of their duty.*

I. Appointment of overseers, with their duty thereupon.

Anciently, the maintenance of the poor was chiefly an ecclesiastical concern. A fourth part of the tithes in every parish was set apart for that purpose. The minister, under the bishop, had the principal direction in the disposal thereof,

thereof, assisted by the churchwardens and other principal inhabitants. Hence naturally became established the parochial settlement. Afterwards, when the tithes of many of the parishes became appropriated to the monasteries, those societies had some share likewise (by reason of the said tithes, and other donations for that purpose) in the relief of the poor. And the rest was made up by voluntary contributions.—By the statute of the 27 *H. 8. c. 25.* The churchwardens or two other of every parish, were to make collections for the poor on Sundays.—By the 5 & 6 *Ed. 6. c. 2.* The minister and churchwardens were annually to appoint two able persons or more to be gatherers and collectors of alms for the poor.—By the 5 *El. c. 3.* The parishioners were to chuse the said collectors and gatherers for the poor.—By the 14 *El. c. 5.* The justices were to appoint collectors for the poor within every parish; and were also to appoint the overseer of the poor, whose office was nearly the same as it is at present, except only for collecting the money, which was done by the aforesaid gatherers or collectors.—By the 18 *El. c. 3.* The justices were to appoint collectors and governors of the poor.—By the 39 *El. c. 3.* The churchwardens of every parish, and four substantial householders there, being subsidy men, or for want of subsidy men, four other substantial householders, to be nominated yearly in Easter week by two justices (1 *Q.*) were to be called overseers of the poor of the same parish.—And so it continues with some small variation, by the statute of the 43 *El. c. 2.* as followeth :

The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the greatness of the parish, to be nominated yearly in Easter week, or within one month after Easter, under the hand or seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish. 43 *El. c. 2. s. 1.*

Statutes concerning the appointment of overseers.

And by the 13 & 14 *C. 2. c. 12.* Whereas the inhabitants of Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, the bishoprick of Durham, Cumberland, and Westmorland, and many other counties in England and Wales, by reason of the largeness of the parishes, cannot reap the benefit of the said act of the 43 *El.* it is enacted, that all and every the poor, needy, impotent, and lame persons, within every township or village within the several counties aforesaid, shall be maintained, provided for, and set on work, within the several and respective township and village, wherein he shall inhabit,

habit, or wherein he was last lawfully settled; and there shall be yearly chosen and appointed two or more overseers, within every of the said townships or villages respectively. s. 21.

And by the 17 G. 2. c. 38. *In every township or place where there are no churchwardens, the overseers alone may act in all respects as churchwardens and overseers may do in other places, by virtue of this or any former act. s. 15.*

And if any overseer shall die, or remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. s. 3.

And if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5 l. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 El. c. 2. s. 10.

Every churchwarden is also an overseer.

The churchwardens] These (as is above observed) were overseers of the poor long before this statute of the 43 El. And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

Must be a parish, township, or vill.

Of every parish] In the case of the King against *Seven and Arnold*, T. 29 & 30 G. 2. two justices appointed *Seven and Arnold*, substantial householders in the *precinct* of the Tower within, *otherwise called the parish of St. Peter ad vincula*, to be overseers of the poor of the said *precinct*. It was objected, that this appointment is not warranted by the statute, which requires that the churchwardens of every parish, and four, three, or two substantial householders there, shall be appointed overseers of the poor of the same *parish*. Mr. J. Denison delivered the resolution of the court (*Ryder Ch. J.* being dead, but concurring with the other justices before his death): This is not a good appointment under the 43 El. c. 2. which requires them to be appointed within a *parish*; neither is it good within the statute of 13 & 14 C. 2. c. 12. which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it was a parish or vill *by reputation*, it might have been good (*Cro. Car.* 92. 394.); but the court cannot intend this *precinct* to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula*, aid the want of this in the appointment: for in all constructions of *alias dict'*,
the

the words that go before the *alias dict'* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias dict'* will vitiate the indictment, for what precedes the *alias dict'* is the true and proper appellation. If in this case the *alias dict'* had come after the parish of St. Peter, it would have done. And the appointment was quashed. *M. S.*

E. 8 G. King and the inhabitants of *Rufford*. A *mandamus* was directed to the justices of the peace of the county of *Nottingham*, reciting that within the vill of *Rufford*, in the forest of *Sherwood*, there are divers substantial freeholders, able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overseers. They return that the vill of *Rufford* is part of no parish, but time out of mind has been extraparochial, without church, chapel, or parochial rites, and that there never have been any overseers of the poor; and for that cause they cannot appoint. And there having been only an extrajudicial opinion of the court, in the case of *Doking and Stokeland*, *H. 11 Ann. (a)* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in parishes, were by the 13 & 14 *C. 2.* extended to all townships and villages, whether parochial or extraparochial: that although most of the forests in *England* are extraparochial, yet notwithstanding they ought to maintain their own poor; and consequently overseers might be appointed: for which purpose in this case a peremptory *mandamus* was awarded. *Str. 512.*

For the statute directeth overseers to be appointed within the several townships and villages within the several counties (without saying, within the several parishes in the said counties); so that if it is a township or village, and such township or village is within the county, it seemeth not to be material whether it is within any parish or not.

But a township or village it must be. As in the case of *Denham and Dalham*, *E. 8 G. 2.* The question was, whether *Southwold* park, being an extraparochial place, consisting of two houses, and about 300 acres of land, was such a place as was liable to maintain its own poor. By

(a) *Post*, this same title.

Poor. (Overseers.)

the court, It is now a settled point, that the justices may appoint overseers in extraparochial places, but such place must come under the notion of a town or village. It is difficult to define exactly what is a township or village; this must be left to the judgment of the court, upon the circumstances of the case stated. The notion of a village according to the ancient law, is a tithing consisting of ten families, and the constable properly is the head of the tithing. By the 43 *Eliz.* there must in every place be at least two overseers; and where there are only two houses, the whole parish in such case must be perpetual overseers, and there is no person over whom they can have jurisdiction, nor any to chuse them but themselves. And it was adjudged, that two houses are not within the rule, so as to come within the notion of a township or village. And the like was said to have been adjudged in the case of *Belvoir*, *M. 2 G. 2.* where there were two houses, the duke of Rutland's and an alehouse. *Str. 1004. Bur. Settl. Caf. 35.*

So in the case of *Stoke Prior and Grafton*, *E. 10 G. 2.* The manor of *Grafton*, an extraparochial place, once consisting of a capital messuage and three keepers lodges in the park, now disparked and consisting of five dwelling houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officer, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village within the statute, unto which a removal might be made. It was moved to quash the orders of the justices, and a rule was made to shew cause; and afterwards the rule was made absolute, without defence. *Burr. Settl. Caf. 101.*

In the case of *K.* and the inhabitants of *Welbeck*, *M. 14 G. 2.* A *mandamus* was granted, suggesting that there are several householders and farmers inhabiting and residing within the village of *Welbeck*, able to provide for the poor; and therefore commands the justices to appoint overseers of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or township, and therefore they cannot appoint any persons to be overseers. And upon argument this was held to be a good return. For though it doth not answer the supposal of the writ, as to there being several substantial householders and farmers; yet it answers the point in the 13 & 14 *C. 2. c. 12.* by saying it is no township or village, or reputed as such: and it is to such places only that we can send a writ. *Str. 1143.*

T. 3 G. 3. K. v. *Showler* and *Atter*. Two justices appoint *Thomas Showler* and *John Atter* overseers of the poor of the township or village of *Haugh*. The sessions, upon appeal, confirm the appointment, and state specially, that it appears to them, that the said place called *Haugh* consists of a capital messuage, in which *Thomas Showler* in the said appointment named, with all his family, dwells; and of two small ancient cottages; and of one other small cottage lately built; (all which cottages are let, along with the said capital messuage and the farm thereunto belonging, to the said *Thomas Showler*;) and of another tenement part of the said capital messuage; and all of them inhabited by families; and that one of the cottages is inhabited by the said *John Atter*, who is a day labourer, and his family; and another of the said cottages is inhabited by another day labourer, and his family; and the other of the said cottages is inhabited by a shepherd and his family; and the tenement, part of the said capital messuage, is inhabited by a poor widow and her five children: All which occupiers of the said cottages, and of the said tenement part of the said capital messuage, are under-tenants to the said *Thomas Showler*.—It was moved to quash these orders, for that the facts stated shew, that this place is neither a township nor a village.—And the court were clearly and unanimously of opinion, that both these orders ought to be discharged. *L. Mansfield* observed, that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish. *Bur. Mansf.* 1391.

And in the case of *K. v. justices of Bedfordshire, E. 22 G. 3.* it was holden, that in order to obtain a mandamus to compel justices to appoint overseers of the poor, it must be expressly sworn, that the place in question either is, or is reputed to be a vill. *Cal. Cas.* 167.

Also in the case of *K. v. justices of Peterborough, H. 23 G. 3.* on shewing cause against a rule which had been obtained for a mandamus, to require the appointment of overseers of the poor, for a certain vill or township called *Peterborough Minster*, it appeared that it was an extraparochial place containing upwards of 60 acres of ground, upon which were 25 dwelling houses at least, besides poor houses, of the annual value of 40*l.* at least; that these houses are inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or by strangers to the cathedral, and mostly persons of fortune, who keep

servants that acquire settlements therein. That the poor have been supported from some fund belonging to the dean and chapter; that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do.——*L. Mansfield*. This space comprehends no more than the site of the cathedral and the area round it, and consequently was in former times within sanctuary, and as such sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages without interruption enjoyed those immunities, as *Westminster Abbey* now does and other places of the like nature. The antient inns of court, tho' not exactly upon this principle, have also at all times been privileged; and a similar exemption was not questioned in a late case *K. v. Gardner*, with respect to that part of the court and garden ground of *Catherine Hall* in the university of *Cambridge*, which lay within the old and extrapara-ochial part of that foundation. Would you say that *Christchurch* in *Oxford* is a vill? I am not satisfied that this place is a vill, and the party applying don't even call it so.——The other judges concurred. —Rule discharged. *Cal. Caf.* 238.

What number
to be appointed.

Four, three, or two] In the case of *K. and Harman*, *M.* 13 G. 2. An appointment of five overseers was thought to exceed the direction of the statute; but inasmuch as the 13 & 14 C. 2. impowers the justices to appoint two or more (indefinitely) in townships or villages, and it hath been the custom in large parishes to appoint more than four, the court would not quash the appointment. *Sess. C.* 2. 148.

But in the case of the *King* against *Loxdale* and others, *H.* 30 G. 2. on a rule to shew cause why an appointment of five overseers for the parish of *St. Chad* in *Shrewsbury* should not be quashed, it being objected that this appointment was not warranted by the statute of the 43 *Eliz.*—By *L. Mansfield* Ch. J.: Upon reading the above case of the *King* and *Harman*, I find it was pressed in that case, that the usage had been for more than four overseers to be appointed; and Sir *John Strange* was instructed to argue it upon that head, on this maxim, that *communis error facit jus*. In the printed case of the *King* and *Harman*, it is said, the court refused to quash the order. But this is a mistake. Being desirous to know the usage in a variety of

of parishes, we desired the agents to inquire what had been the usage in the large parishes in *London* and *Westminster*, and more particularly with respect to the different parishes in *Shrewsbury*. The result is, in *Shrewsbury* it appears there are four parishes, in which the number of overseers has never exceeded four; but the parish of *St Chad*, in which the present dispute arises, has five for one year only: In the parish of *St Andrew's, Holborn*, there are eight overseers; but then there are three divisions there, and overseers for each; and orders of removal are made from one division to another: In *St Giles's*, eight overseers; but in 1756, only four were appointed by the justices, and four more serve voluntarily as assistants: In other parishes no more than four. This account that has been given us is very satisfactory, for it lays the usage out of the case, and proves it to have been the contrary way. This brings me to consider what are the authorities and judicial precedents in this case. And this seems to be quite a new and original case, on which there has never been any judicial opinion given. There never was any doubt till the case of the *King and Harman*; and there the court gave no determination on the validity of the appointment, as appears by the rule "and the court will further consider of the order." The case of the *King and Bessant*, *H. 18 G. 2.* was very different from this; there it was impossible to have more than one overseer. But there was no judicial opinion in that case, so that neither of these two cases hath any determination extending to the present case. This case therefore being an original one, it must be determined on the true construction of the statute of the 43 *Eliz.* which may be called, The great constitution of the system of law concerning the poor. To incline the court to construe this act with a latitude, two other clauses have been mentioned, that have been held merely directory: One is, with respect to the time of appointing; now the precise time is not of the essence of the thing, where third persons, and innocent ones, are affected. As in the case of the town of *Launceston*, 1 *Roll's Abr.* 513. An appointment after the time was held to be good, rather than defeat the intent of the charter, and leave the corporation destitute of a magistrate by another construction. So in the case of the *King against Sparrow* and others (*Str.* 1123.), (a) where the overseers were appointed more than a month after *Easter*; and to have said in that case, that there could not have been an appointment

(a) *Post*, this same title.

after the time, would be to say, that there is no remedy for the neglect of the justices to appoint within the time. The other clause is, to be nominated by the justices *in or near*. This is a loose indefinite expression. If a justice lives 20 miles off, if there is none nearer, he must be said to be near. It is a word of relation. I do not see how this clause could be construed otherwise. And though some part of the act should be construed to be directory, yet it cannot from thence be inferred that the whole is so. It is a rule of construction, that where persons, as justices, commissioners, or the like, have a special authority by statute, they have no power but under that statute; and if the thing is done otherwise, and not agreeable to the special authority, it is void. There is no room for the distinction, that there must be negative words to circumscribe the power. It was said at the bar, that if a man has a power originally, and an act of parliament gives him something less than he had before; there, without negative words, the act will not take away that which he had before. But it can never be necessary for the act to say a man shall not do what he could not do before. The meaning of the legislature was not to leave the justices an absolute discretion, but to confine their discretion not to exceed four, nor to appoint less than two. There is another rule of construction: Where there are at different times different statutes made concerning the same matter, though some of them should be expired, and not referred to by the subsequent statutes; yet being *in pari materia* they shall all be taken together, and considered as one system of that branch of positive law, and giving light to one another. This has been so determined of the disabling statutes concerning leases by ecclesiastical persons; so the statutes relating to bankrupts, some of which are temporary, are *in pari materia*, and shall be taken together. Thus all the statutes since the reformation concerning the poor, I consider as a new body of positive law, and they must be taken together. By the 39 *Eliz. c. 3.* four overseers were to be appointed, and there was no latitude at all. If the question had stood upon that statute, the justices could not appoint a greater number. There is a late instance: By the *British museum act*, 26 *G. 2. c. 22.* the trustees, or the major part of them, were to do certain acts. It was found impossible to get the major part of them together, and they were forced to apply for a new act, 27 *G. 2. c. 16.* giving power to the major part of the trustees then present, not less than seven, to do those acts. It is plain to me, that in making the 43 *Eliz.* the legislature had

the 39 *Eliz.* under their contemplation. They refer to it; and the 43 *Eliz.* was not to commence till the *Easter* following. The 39 *Eliz.* expired with the session in *December*: They therefore continued the 39 *Eliz.* till the *Easter* following. This clearly accounts for the expression four, three, or two; rather than two, three, or four; (for there is a great difference between these two expressions;) and points out to a demonstration what the legislature meant. Parishes were not so populous then; and four were thought too many; and therefore the 43 *Eliz.* gives a latitude to appoint fewer, and directs the justices to be governed by the greatness or smallness of the parish. It has been contended, that the 13 & 14 *C. 2.* is a legislative exposition of the 43 *Eliz.* I do not see that that statute will vary the question one way or the other. That statute is to make each township in the nature of a separate parish; and says, that two or more overseers shall be chosen in each township. I listened for a case to shew that in these townships they could appoint five. Upon enquiry, it does not appear that more than two have been appointed. The statute of *C. 2.* refers you, as to the appointment, to the statute of the 43 *Eliz.* by express words, and this reference is the same as repeating the statute. It was observed that there has been a great latitude in the construction of *C. 2.* that is, that it hath been extended to counties not therein named. But it would have been absurd to say, that that statute reciting an inconvenience in *Wales*, should extend to some other place only. The statute made in the year 1740, for the parish of *St. Martin's* in the Fields has great weight with me. This proceeded from a conviction in those that applied for the act, that they could not appoint more than four. It shews that the parliament thought it was a real doubt, and that they thought it necessary that there should be a boundary; for they have not left it at large, but confined the parish not to exceed nine overseers. There are two acts which passed after the case of the *King* and *Harman* and the act for *St. Martin's* parish, in the 17 *G. 2.* to remedy some inconveniences relating to the overseers, with regard to rates and other matters; and yet they make no alteration in the number of overseers. In the parish of *St. Clement's Danes*, they have restrained themselves to four ever since. And the precise number is not immaterial, as was said at the bar, either to the parties themselves, for it is a burdensome office, and the more there are at the same time, the quicker will the rotation be; or to the parishes for whom,

whom they are trustees, for a trust is not the better discharged by a greater number than by a few. There may be more expence in a larger number. They may be obliged to divide themselves into separate quorums; which is no immaterial consideration to the persons with whom they are to act. If five may be allowed, there will be no boundary, and then there will be great inconveniences. Upon the whole, the words are precise; and the usage, which alone occasioned my doubt, turns out the other way. This appointment is not warranted by the 43 *Eliz.* — Mr. J. *Denison* was of the same opinion. He said, if this had been a matter of doubt, it is strange that it should never have come before the court before the case of the *King and Harman*, in the 13 *G. 2.* In that case they did not quash the appointment, for the sake of the poor of that particular parish. This is an original creation of the jurisdiction for the maintenance of the poor. The number of overseers is the essential part of the constitution. Where a jurisdiction is created by statute, you cannot vary from it. This office is partly ministerial and partly judicial. The statute of 13 & 14 *C. 2.* is tied up according to the rules of the 43 *Eliz.* and one of the rules is the restraint. As it has rested so long, I am of opinion an appointment of five overseers cannot be warranted. — By Mr. J. *Foster*: I never had a doubt. The court has gone hitherto upon the prudential reason of not overturning the rates of so many parishes. In queen *Elizabeth's* time there were no large and populous parishes in great towns and cities. There were indeed parishes of large extent in the country; but they are provided for by the 13 & 14 *C. 2.* If any inconveniences arise from having too few officers in particular parishes, you must apply to parliament. It would produce confusion to have more officers. The 43 *Eliz.* is the first statute now in force, but not the first which provided for the poor. It does little more than make the 39 *Eliz.* perpetual. And there were several statutes before that. — By Mr. J. *Wilmot*: The circumstance that made me doubt was, the notion of an usage to have more than four overseers in large parishes. The words of the act are so strong, that had the usage been otherwise, I should have doubted whether that could have controuled them: but the usage being to appoint but four, it furnishes a strong argument. And the act for St. *Martin's* is a strong instance of the sense of the legislature. The parliament finding two parochial officers, to wit, the churchwardens, added others for the parochial administration. The 43 *Eliz.* relaxes the 39 *Eliz.* and gives a discretion within the number four. In the 12th clause, with respect to the island of

Rowlands in Essex, a power is given to the justices to appoint such a number of overseers as the exigencies of the place shall require; which shews that where the legislature meant an indefinite number, they have expressed it. In general it would be inconvenient to have an indefinite number; it would not lessen the burden; nor would the parish have a greater security; for each man is answerable only for the money he receives, and accountable for his own acts only. *Bur. Mansf.* 446.

H. 32 G. 3. K. v. Morris. R. Morris being a substantial householder of the parish of *Llangendecin* in *Caermarthenshire*, was appointed overseer of the hamlet of *Valendre* in the said parish; against which he appealed to the next sessions, where the appointment was confirmed with costs, stating it to be "on the hearing of the appeal touching the appointment of *R. Morris* as one of the overseers of the poor of the hamlet of *Valendre*, &c." To the order of sessions returned by the *certiorari*, was annexed a poor rate made on the inhabitants and all other substantial householders in the parish of *Llangendecin*, towards the relief of the poor; and in that part thereof which respected *Valendre* hamlet *Morris* was rated. *Marryatt* made several objections to this appointment. *L. Kenyon*, Ch. J. (stopping *Bearcroft* contra) This court has invariably made a distinction between orders of justices and convictions, and said, that every thing is to be intended in support of the former. As to the first objection, that this is only an appointment of one overseer, in support of which *K. v. Loxdale* (above) was cited; I well remember that that case underwent a great deal of discussion in *Westminster Hall*; to the determination of that case I subscribe my opinion, that there must be four, three, or two, overseers appointed under 43 *Eliz. c. 2*. But it never has been determined that they must all be appointed by one instrument. And here we are not left to conjecture that no other person was appointed overseer of this place, for it appears on the order of sessions, that this was an appeal of "one of the overseers of *Valendre*." Then it was objected that this was not a township or vill, but only a hamlet: but "vill" and "hamlet" are in common acceptation used as synonymous terms. If, indeed, the sessions had stated specially in their order that this was not a vill, we should have been bound to quash the appointment; but as it may be a vill, we are now to intend it for the purpose of supporting the order; and if we were to look at the rate, which indeed should not have been returned by the *certiorari*, the appellant there appears to be rated for property in *Valendre*. And I am glad

Must be a substantial householder there,

glad to find that the sessions are authorised by 17 G. 2. c. 38. to give costs. Both orders confirmed. *Durnf. and East, 4 V. 550.*

Substantial householders there] M. 20 G. 2. Case of the overseers of *Wobly* in *Herefordshire*. There were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as *principal inhabitants*, instead of pursuing the words of the statute, which are, *substantial householders*: And the other, because it only called them substantial householders, without adding *there, or in the parish*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str. 1261.*

And abundance of other orders have by the court of king's bench been quashed from time to time, for not setting forth that the persons appointed were substantial householders.

And it seems not to be sufficient that the party appointed is an inhabitant for part of the year only, but he ought to be generally resident there; and therefore the court of king's bench seemed to discountenance a parish in chusing a citizen of *London*, who only resided with them in the summer, to be overseer; but the order being bad in other respects, no judgment was given upon this point. *Garth. 161. K. and Moor.*

And in the case of *K. v. Stubbs, E. 28 G. 3.* Which was, that *Alice Stubbs*, widow, and two day labourers (describing them to be substantial householders) were appointed overseers for the townships of the monastery of *Renton Abbey*; one of them was a servant to Mrs. *Stubbs*, and rented a small house only, and something more than an acre of land, where he lived with his wife and family, and was poor; the other was a labourer and poor, but the house in which he lived, with four or five roods of land belonging to it, was his own property.—By the court, the word *substantial* is a relative term; if there were a great many opulent farmers, then the appointment of day labourers might be improper; but here, there were no other persons to serve. No better persons can be had than the place affords; and the want of them is no reason why the poor should not be provided for; and the appointment was confirmed. *Durnf. and East, 2 V. 395.*

Whether a woman may be appointed an overseer.

With respect to a woman being appointed an overseer, it hath been determined as follows: A *mandamus* was moved for to the justices to nominate two substantial householders to be overseers of the poor of the parish of *Chardstock* in the county of *Dorset*; and there was an affidavit, that at a meet-

meeting of the parish after *Easter* last, a man and a woman were elected overseers; and at a meeting of the justices they approved of the man, and refused the woman, as being an unfit person to serve as overseer; and the old overseers refusing to nominate any other, the justices approved of the man only. By *Powel J.* A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. And *Parker Ch. J.* directed, that the parish should apply to the justices to have another nominated, and if they refused, then to apply to the court for a *mandamus* the next term. *E. 10 An. 16 Viner, 415.*

And in the above case of *K. v. Stubbs, E. 28 G. 3. Alice Stubbs*, widow, with two day labourers, were appointed overseers of the poor for the township of the monastery of *Renton Abbey*; on appeal to the sessions, this appointment was confirmed, subject to the opinion of this court, on the following case. The township of the monastery of *Renton Abbey* is an extra-parochial place, containing three houses only, and about four or five hundred acres of land. Those three houses are respectively occupied by the appellants. *Mrs. Stubbs* lives in the *abbey house*, and occupies the greatest part of the land within the township.—Several objections were made to this appointment; one of which was, to the appointment of *Alice Stubbs*, who being a woman, could not legally be appointed to such an office. *Ashhurst J.* delivered the opinion of the court.—The only qualification required by the 43 *Eliz.* is, that they should be *substantial householders*: it has no reference to sex. The only question then is, Whether there is any thing in the nature of the office that should make a woman incompetent, and we think there is not. There are many instances where, in offices of a higher nature, they are held not to be disqualified; as in the case of the office of high chamberlain, high constable, and marshal; and that of a common constable, which is both an office of trust, and likewise, in a degree, judicial. So in the case of the office of sexton. As to the above case, that is no conclusive authority. It is to be collected from the case, that there were other persons in the parish proper to serve; and if so, the court held the justices had not acted improperly in refusing to approve of a woman; where there are a sufficient number of men qualified to serve the office, they are certainly more proper; but that is not the case here; and therefore, if there is no absolute incapacity, it is proper in this instance, from the necessity of the case. And there is no danger of making it a general practice;
for

for as the justices are invested with a discretionary power of approbation, it is not likely that they will approve of such an appointment, when there are other proper objects. Therefore we are all of opinion that the appointment ought to be allowed, and the order of sessions confirmed. *Durnf. and East*, 2 *V.* 395.

Whether a justice may be appointed an overseer.

Whether a *justice of the peace* may be appointed overseer, seemeth not to have been determined. By the tenor of the following report, it seemeth to be in a great measure discretionary in the justices appointing, and in the sessions, upon an appeal, to determine whether he is a fit person or not. *H. 30 G. 2. Rex v. James Gayer*, esquire. Two justices appointed Mr. *Gayer* to be overseer of the poor of the parish of *Rockbear* in the county of *Devon*. The sessions, upon appeal, vacate the appointment; setting forth, that it appearing to them that he was then an acting justice of the peace for the said county, and also a lieutenant of marines in his majesty's service on half pay, and that there are other sufficient substantial householders within the said parish for the doing such office, they therefore vacate and make void the appointment of the said *James Gayer*.—On a rule to shew cause, the counsel on both sides went into a long argument, whether the reasons given were sufficient; particularly whether the offices of justice of the peace, and of overseer of the poor, were compatible, and whether the objection could be removed by appointing a deputy overseer; if it could, then, whether a justice of the peace was liable to be appointed overseer, in order to his executing the office by deputy. By *L. Mansfield Ch. J.* The general questions concerning the incompatibility of offices, and the power of appointing deputies, are of a very large compass indeed; but the present question seems to me to turn in a very narrow space. The sessions, upon an appeal, have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers, as the two justices had. They have given their opinion that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion; because the legislature has intrusted them, upon an appeal, with the power or authority of appointing overseers. If they had given no reason, their order had undoubtedly been good. We must have presumed that they acted upon proper grounds. It is true, that where the whole reason is set out, and is clearly wrong, we may and ought to quash an order manifestly made by mistake, upon an erroneous foundation. But then the bad reason given, must appear to have been their only inducement. If there

may have been other grounds, they shall be presumed sufficient; and the order ought not to be set aside, because some of their reasons, unnecessarily given, appear to be bad. There was no necessity for appointing Mr. Gayer. The sessions state, that there were other sufficient substantial householders within the parish. They might think Mr. Gayer, under all the circumstances, improper unnecessarily to be appointed. His being an acting justice of the peace, and a lieutenant of marines, might be two circumstances which weighed among others. But it doth not follow, neither is it said, that they looked upon both or either of these reasons as an exemption from being appointed, or a disability to serve the office of overseer; and that they vacated the warrant of two justices as illegal upon that account. The execution of a discretionary power, where it is not necessary to give a reason, ought to be supported, unless the whole reason is set out, and manifestly wrong. Here, the whole reason, upon which the sessions acted, is not given. They say there were other persons qualified. Supposing Mr. Gayer liable to serve the office, they might think him not so proper as many others. And therefore we are not obliged to say, that the whole reason they went upon is bad; allowing (for argument) that there arose no legal objection to the appointment of Mr. Gayer: Which, I think, there is no occasion now to examine. Mr. J. Denison concurred, and said, They were not obliged to give any reason at all; and if it be only an imperfect one, we ought not to quash their orders. We will intend every thing in favour of the justices, in their orders. Now here, the reason doth not appear to be a wrong reason: It is enough, that they judged him an improper person to be overseer.—And by the court unanimously, the order of sessions was confirmed, discharging Mr. Gayer from being overseer. *Burr. Mansf.*

245.

Note, By 26 G. 3. c. 107. No serjeant, corporal, or Militia men exempted. drummer of the militia, nor any private man, from the time of his inrollment until his discharge, shall be liable to serve as an overseer of the poor. s. 130.

[But the act provides no exemption for the officers.]

By the 18 G. 2. c. 15. Freemen of the corporation of Surgeons in London, are exempted from the office of overseer of the poor. do n.

To be nominated early in Easter week] E. 13 G. K. and When to be appointed.
Clerkenwell. The court seemed to think an appointment of overseers on a Sunday, to be a good appointment; for
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it may be in *Easter* week, and this is the first day of the week.—But the case was determined upon another point, because they were not said to be *substantial householders*. *Foley*, 4.

In the case of *K. and Butler*, *E. 8 G. 3. L. Mansfield* asked, whether there had been any determination that an appointment on a *Sunday* was good? *Mr. J. Aston* said, he had a note from *Mr. J. Bathurst*, of the said case of *K. and Clerkenwell*, that an appointment made on *Easter Sunday* shall be good, it being a work of charity. But *L. Mansfield* said, notwithstanding that reason, I should think, that an appointment on a *Sunday* is *prima facie* clandestine and void. *Black. Rep.* 649.

T. 14 G. 3. K. and the overseers of Bridgwater. Upon shewing cause why several appointments of overseers should not be quashed, the case appeared to be a contest between two adverse sets of borough justices. Each set met before midnight or *Easter-even*, and each began making their appointment of overseers the instant the clock had struck twelve; and so kept on renewing the same appointments for an hour or two. But one set of them made a fresh appointment at eight o'clock on the *Sunday* morning, supposing that there might be a contest concerning the priority of those appointments which were made soon after midnight, and perhaps all of them bad. On shewing cause, several cases were cited to prove the appointments good. But by *L. Mansfield*: The conduct of the justices in this case is a shameful prostitution and abuse of their office for election purposes; and I wish any person could be found who would undertake to prosecute both parties. It would have been more for the interest of either side, to have waited for a legal appointment on the *Monday*. I do not know that there is any authority which says, that an appointment made on a *Sunday* is good; but it certainly is not a day for such purposes as these, and therefore I will not give my sanction to any of the appointments. Let all the appointments be set aside, and a *mandamus* be directed to the justices to make a new appointment; and let the mayor give two days notice of the time and place of meeting for such appointment. The other two judges concurred. *Crowper*, 139.

[Or within one month after Easter] *H. 13 G. 2. K. and Sparrow.* Upon a rule to shew cause, why the appointment of overseers for the town of *Ipswich* should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and

and that consequently the appointment was void. But by *Lee Ch. J.* who delivered the opinion of the court; as the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, for it would subject the parish to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l*. but that doth not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions. 2 *Sess. C.* 140. *Str.* 1123.

Under the hand and seal of two or more justices] *M.* 13 *G.* *Chilmerston and Flagg.* The sessions appointed overseers; but the order was quashed by the court of king's bench, because the sessions have no original jurisdiction in that case by the statute. 1 *Sess. C.* 260. *Foley*, 7.

Sessions cannot appoint overseers.

And the reason is, because the statute gives a power of appealing to the sessions against the order of appointment; which power by this means would be taken away.

In or near the parish or division] *M.* 13 *G.* 2. *K. and Sparrow.* An appointment of overseers, not mentioning the justices to be of the division, was held to be good enough; for that the words in this case are only directory. 2 *Sess. C.* 140.

In some of the ancient statutes, not now in force, as particularly the 22 *H.* 8. *c.* 12. the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which the statutes intended; and consequently it cannot be necessary to set forth now, that the justices are *in or near the division*.

And many other counties in England and Wales] *T.* 27. *C.* 2. in the case of *Skillington and Norton*, it was held,

that although other counties in general are here mentioned in the recital; yet the statute doth not extend to any other counties but those expressly named; none others being specified in the enacting part. 2 *Lew.* 142.

But afterwards, in the case of *Dolting and Stokeland, H. 11 An.* It was held by the whole court, that by reason of the words [*and many other counties in England and Wales*] the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales*. *Foley*, 98.

And in the case of *Clifton and Churcham, H. 12 G. 2.* It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And *Lee Ch. J.* said that so it was determined, upon great debate and consideration, in the aforesaid case of *Dolting and Stokeland*; which case hath been ever since adhered to. *Andrews*, 314.

Whether a parish consisting of several townships, can now be subdivided, and have separate overseers appointed.

By reason of the largeness of the parishes cannot reap the benefit of the act of 43 Eliz.] T. 27 & 28 G. 2. K. and the justices of *Middlesex*. On a rule to shew cause why a *mandamus* should not go to compel the justices to appoint overseers for the township of *Kentish Town*, it appeared by the affidavit that this parish hath always had two overseers: That a rate has been made as one rate for the whole parish: That their appointments have been for the whole parish, but that each overseer had collected and paid within his own division; and if at the end of the year there is a surplus in either of their hands, it is so much of it paid over into the hands of the other overseer as to make them both equal: That they have one workhouse; one overseer looks over it one week, the other the next.——It was objected to this rule, that this separate appointment would dismember the parish, which has been united to this time: That when the 43 *Eliz.* was made, and before the 13 & 14 *C. 2.* every parish maintained its own poor: That the 13 & 14 *C. 2.* was made to accommodate large parishes, where some parts lay at a great distance from others; and it was necessary for their convenience to have an increase of officers: If that statute were to extend to all towns, parishes, and vills, the populous parts of the parishes would be most burdened, and the out-parts of them and the greatest extent of lands would be in a great measure excused: To intitle the petitioners to what is now prayed, it should be shewn that they are such a parish as cannot receive the benefit of 43 *Eliz.* without the aid of 13 & 14 *C.*

14 C. 2. It is not sworn that two overseers are not sufficient: It doth not appear, that this vill of *Kentish Town* is a distinct vill or township; so it is not brought within the 13 & 14 C. 2.—It was answered, That this writ of *mandamus* determines nothing of itself, but is a means of trying this fact, and that the justices may try the special matters: That this is so populous a parish that it requires more attendance than any in the northern parts which are specified in the act.—By the court: If this is a case that falls within the 13 & 14 C. 2. a *mandamus* is a writ of right, and the court must grant it. It has been determined, that this statute is not to be confined to the counties mentioned in the statute. *Kentish Town* has never been considered as a separate division; and the overseers have been usually appointed for the whole parish. What is declared from the affidavit shews, that they can do very well under the 43 *Eliz.* without calling in aid the 13 & 14 C. 2. for they have two overseers, and the methods they have used to collect their rates, and to take care of their poor, is very just and reasonable. To bring this within the statute, they must shew this to be a distinct vill or township. We expected they would have shewn that they had separate overseers, maintained their poor separately, and had a separate rate.—And the rule for a *mandamus* was discharged. *Bolt.* 17.

H. 5 G. 3. *Peart & Westgarth.* On a special verdict at the *Durham* assizes, it was stated for the opinion of the court, That the parish of *Stanhope*, from the 43 *Eliz.* to the 9 G. 1. had one joint appointment of overseers of the poor of the said parish; and during all that time, the poor of the said parish were jointly relieved and maintained by intire and general rates upon the whole parish: That during the time above mentioned, there were four churchwardens, and four overseers of the poor; which four overseers were respectively nominated out of each of the four quarters or districts within the said parish: That the said parish is 20 miles in length from east to west, and eight miles at a medium in breadth: That in the 9 G. 1. at the general quarter sessions for the county of *Durham* it was ordered, that the several townships within the said parish should maintain their poor separately; and from that time there have been separate appointments of overseers for each of the said four quarters or divisions. The case further stated, that orders of removal had from time to time been made since the 9 G. 1. for the removal of poor persons from one of the said quarters or districts to another, and appeals made by one quarter against another, concerning

orders of justices relating to the poor of each. The question was, Whether the several places or districts were one intire parish, township, or village; or whether the said several places, being so divided as aforesaid, constituted four distinct and separate townships or villages within the 13 & 14 C. 2. c. 12.——Against the division it was argued, that in order to intitle themselves to a division it must be shewn, that the parish was so large, that they could not otherwise have the benefit of the 43 Eliz. c. 2. To prove this, was cited the above case of the *King* against the justices of *Middlesex*, relating to the inhabitants of *St. Pancras* and *Kentish Town*, Tr. 1754. That in this case there are no facts to warrant this division. The sessions had no power to make it. Neither the sessions nor this court have power to make a division, but upon facts which shew the parish to be so large that it cannot have the benefit of the 43 Eliz. It shall be presumed, that the act may be put in force, unless the contrary appears. That the truth of the matter in this case was, that the rich part of the parish wanted to separate themselves from the poor part, and throw the burden upon them. On the other hand, it was argued, that although it is stated, that this parish was one intire parish from the 43 Eliz. till the 9 G. 1. yet it is also stated, that there were four churchwardens and four overseers, one out of each quarter. As to the case of the *King* against the justices of *Middlesex*, relating to the inhabitants of *St. Pancras*, the *mandamus* was denied to appoint overseers for the north division of *Kentish Town*, because it appeared, that the parish *could* reap the benefit of the 43 Eliz. and it did not appear that the north division of *Kentish Town* was a township or vill. In the present case, the order of sessions has been acquiesced under for above forty years, during all which time separate overseers have been appointed.——By *L. Mansfield* and the court: The policy of this law of the 13 & 14 C. 2. was mistaken. It went upon a wrong principle. The divisions ought rather to be enlarged than diminished. As to the question itself: It ought to appear, that there was an inability in the parish to have the benefit of the act of the 43 Eliz. Now, here, no such inability appears; but quite the contrary, for a great number of years. So that there is no foundation for the division. The acquiescence under it was upon a false notion, that the sessions had such a power: Which they had not. And there is no inconvenience in setting right this wrong usage which has obtained for forty years. Here the foundation is wanting. Therefore they ought to appoint

appoint overseers for the whole parish. *Burr. Mansf.* 1610.

E. 20 G. 3. K. and the inhabitants of *Uttoxeter*. On a rule to shew cause, why an order of sessions, confirming separate appointments of overseers of the poor for the township of *Uttoxeter* and three other divisions of the parish of *Uttoxeter* in *Staffordshire*, should not be quashed, it appeared from the special case stated by the sessions, that the parish of *Uttoxeter* is five miles in length, and five in breadth, and contains five several townships: That the said townships are one intire parish: That ever since the year 1643, they have had separate appointments of overseers in the several townships within the said parish; but that until the year 1730 they jointly relieved and maintained the poor in and throughout the parish; but since that time they have generally maintained them separately in the several divisions. — In support of the order of sessions, it was argued, that it appears from the facts found by the special case, that the parish hath not had the benefit of the statute of 43 Eliz. since more than four overseers had been appointed ever since the year 1643, and that statute doth not authorize the appointing more than four. Mr. J. Buller said, Ought it not to have been stated in the case, as a substantive fact, that the parish had not had the benefit of the 43d of *Elizabeth*? Unto which it was answered, that if enough is clearly and explicitly stated, to shew it to be the truth, the court will infer it without an express finding, for the purpose of supporting the order. The rule with regard to orders of sessions is the reverse of what obtains in the case of convictions. The court presumes against convictions, unless facts appear sufficient to support them; but an order of sessions is presumed to be right, unless the facts stated prove it to be wrong. — On the other hand, in support of the rule for quashing the orders, it was insisted, that the case of *Peart* and *Westgarth* is directly in point, and that it is clearly established by that case, that unless the sessions expressly state that the parish hath not had the benefit of 43 Eliz. the court will presume that it has: That the statute of C. 2. mentions largeness as the only reason for a division, and the case of *Peart* and *Westgarth* shews, that the parish of *Uttoxeter* is not too large; for there, the parish of *Stanhope* appeared to be twenty miles long, and yet it was not to be divided, and *Uttoxeter* parish is only five miles. — L. Mansfield stopped the other counsel on the same side, and said, The case of *Peart* and *Westgarth* decides the question. It must appear to the court that there was a disability to reap the benefit

of the statute of 43 *Eliz.* Here the contrary appears. Though there were separate overseers, there was a joint maintenance till 1730. The acquiescence of the parish for a number of years will not alter the law. The case of *Peart* and *Westgarth* was well considered. The court thought the statute of *C. 2.* proceeded upon a bad principle of policy, for that large districts for the purpose of maintaining the poor are much to be preferred to small ones. — And the order of sessions, and the four appointments of overseers, were quashed. *Douglas*, 332. *Cal. Cas.* 84. *f. c.*

And in the case of *K. v. Inhabitants of Beading*, otherwise *Seal*, *E. 20 G. 3.* The same point came in question, where the court recognised the doctrine laid down in the case of *Peart* and *Westgarth*, as having fully settled the matter. *Cal. Cas.* 90.

But in the case of *K. v. Sir Watts Horton* bart. and another, *M. 27 G. 3.* A rule had been obtained last term, calling upon the defendants, who were justices of the peace for the county of *Lancaster*, to shew cause why a *mandamus* should not issue, commanding them to appoint two overseers for the township of *Pilsworth* in the said county. — This motion was founded on affidavits, which stated, That the parish of *Middleton* consists of eight separate and distinct townships or villages; to wit, *Middleton*, *Thornbarn*, *Hopwood*, *Pilsworth*, *Birtle cum Bamford*, *Ashworth*, *Ainsworth*, and *Great Lever*; each of which has immemorially had a separate constable and churchwarden. That *Ainsworth* and *Great Lever* from time immemorial, and *Ashworth* for the space of about seventy years, have had separate overseers. That before the separation of *Ashworth*, there was a joint appointment of six overseers for the six townships, one out of each, who made a general rate or assessment for the poor of all the six townships; and that each overseer acted within his own township; but that at the end of the year, there was a general settlement of all disbursements, and the expences borne equally by all. That since the separation, there has been a like joint appointment of five overseers, for the remaining five townships, who have acted in the same manner as before the separation. That the parish of *Middleton* could not reap the benefit of the 43 *Eliz.* in relation to the maintenance, relief, and government of its poor, on account of its largeness, being 14 miles in length, and 10 in breadth, and also on account of its great population, and because three out of the said eight townships maintained their own respective poor. That the defendants were requested, at the

last annual meeting, to appoint two overseers for the township of *Pilsworth*, which they refused. On the other hand, several affidavits were read against the rule, which stated, that the *parish* of *Middleton* consists of four distinct and separate townships, viz. *Middleton*, *Ashworth*, *Ainsworth*, and *Great Lever*; and that the *township* of *Middleton* consists of five separate *hamlets*, or *precincts*, and not separate *townships*. That the rates and assessments had been made *generally* for the township of *Middleton* at large, and not for each separate district; and that the overseers accounts had been made out in the same manner.—*Erskine* and *Shepherd* shewed cause against the rule, and contended, that in order to lay a ground for the court to grant the *mandamus*, it would be necessary to shew two things; 1st, That this district of *Pilsworth* is a *township*: 2^{dly}, That it cannot enjoy the benefit of the *stat. 43 Eliz.*—*Bearcroft* and *Cockell*, *contra*, contended, that where there is a constable, there is necessarily a township. Here it is agreed on both sides that there is a constable.

But what is decisive in the present case is, that it appears to have been always necessary for the parish of *Middleton* to have *five* overseers, which is a proof that it could not enjoy the benefit of the *43 Eliz.* which confines the number to *four*.—They were then stopped by the court.—*Ashburst J.* This is a very plain case. It has been argued against the rule, that if the court should grant a *mandamus* to appoint separate overseers for the township of *Pilsworth*, one of the five remaining districts, it will necessarily follow that the others will be entitled to the same privilege. But that argument applies equally the other way; for as soon as the other three townships were separated, the remaining five had a right to be so. It is clear that the parish, *as a parish*, cannot have the benefit of the statute *43 Eliz.* because it has always had a greater number of overseers than are allowed by that act. Therefore upon that ground, as well as upon the former, that the other three townships have had separate overseers; I am of opinion that the five remaining ones are also entitled to have them.—*Buller J.* The parties applying for this rule must necessarily make out two points before they can succeed. First, that this is a township:—And secondly, that it cannot have the benefit of the *43 Eliz.* The last is the point which has been most relied on: For as to the first, it certainly is a township. Wherever there is a *constable*, there is a *township*. There may be a constable for a larger district than a township, but not for a smaller. The doubt in many of the cases, whether such a place was a township or not, has arisen where there was no constable.

Then

Then the remaining question is, Whether the township of *Pilsworth* can have the benefit of the 43 *Eliz.*? What is a decisive answer against that is, that the other three townships have separate overseers: We must consider what is meant by *the benefit* of the statute. It is that the parish may maintain their own poor, *as a parish*; for unless they can do it *as such*, they cannot have the benefit of the statute. Now it is here stated, that three of the townships maintain their own poor; but unless they *all* join, they cannot reap the benefit of the statute. It has been argued, that the parties applying for the *mandamus*, should have shewn special reasons to the court, why they cannot have the benefit of the statute. But in fact they have done so: for they have stated the largeness of the parish, and its great population, which circumstances are not denied by the other side. Independent of these reasons, another ground laid for the *mandamus* is, that the five remaining townships require five overseers. If from necessity they must have five overseers to govern their poor, that affords a strong argument to prove, that even if these five comprehended one parish, independent of the other three, yet they could not enjoy the benefit of the 43 *Eliz.* which allows only four overseers. The cases which have been mentioned were all rightly decided, but they do not apply to the present. As to the above case of *Peart* and *Westgarth*, the parish had enjoyed the benefit of the statute of *Eliz.* for 120 years. After such a length of time, the court said, that they must have shewn to them some strong reasons to induce them to believe that it could not be continued, before they would appoint overseers in a different manner from that pointed out by the statute of *Eliz.* notwithstanding any intervening custom for 40 years: but no sufficient reason appearing, they directed one joint appointment for the whole parish. Next, as to the aforesaid case of the *K.* against the justices of *Middlesex*, it appeared most clearly that the parish of *Kentish Town* could have the benefit of the statute of *Eliz.* There were two overseers appointed for the whole parish, which was sufficient to answer the purposes of the statute. Then as to the above case of the *K. & Uttoxeter*, the answer to it is, that the parish did not shew that they could not have the benefit of the 43 *Eliz.* *Per curiam*: Rule absolute. *Cas. by Durnf. & East, 3 V.*

374.

Also in the case of *K. v. Leigh. T. 30 G. 3.* *John Blurton*, an inhabitant and occupier of lands in the township or liberty of *Field* in *Staffordshire*, appealed against a poor rate made by the churchwardens and overseers of the

parish of *Leigh*, upon the ground that the township of *Field* was entitled to maintain its own poor separately from the rest of the parish of *Leigh*, within which it was situated. The sessions quashed the rate generally, and stated the following case :—The parish of *Leigh* is 5 miles in length and $4\frac{1}{2}$ in breadth. It consists of 8 townships. The township of *Field* (one of the 8) is within the said parish, and consists of 6 farm houses with farms thereunto belonging, containing 700 acres of land and 3 or 4 small houses. The township of *Field* for 60 or 70 years (and before, for any thing that appears to the contrary) has had separate overseers, and separately maintained its own poor. Two overseers have been appointed for the township of *Field*, and two for the rest of the parish of *Leigh*. A constable has regularly been appointed for the township of *Field*, and another for the rest of the parish. In 1764 a pauper was removed by two justices from the parish of *Leigh* to the township of *Field* within the said parish, from which it does not appear there was any appeal.—*L. Kenyon Ch. J.* I cannot help regretting that this question should ever have been started, because it tends to disturb the quiet of this place, where the poor have been so long provided for in a particular way. It is of some importance to one's own mind, though it cannot indeed affect the decision of this case, that the gentlemen of this county have considered this as an attempt which ought not to have been made, as being an innovation on the old settled mode of maintaining the poor in this district. There is no doubt but that this case is within the 13 & 14 C. 2. c. 12. In some of the cases it has been made a question whether the particular district were or were not a vill or township; but no such difficulty occurs in this case, because it is stated as a fact that *Field* is a township. Then the question is, whether at the time of passing the statute of C. 2. this district was in a situation to receive the benefit of 43 El. for if the parish were properly divided at that time, nothing which has happened since will induce us to make any innovation. In the cases cited, *Peart v. Westgarth*, & *K. v. Justices of Middlesex*, it was stated that from the time of El. down to the reign of G. 1. those parishes had in fact reaped the benefit of the statute of El. whereas here, for 60 or 70 years, and perhaps for a longer period for any thing that appears to the contrary, this parish has been subdivided, and has not had the benefit of that statute. This therefore is like the case of *K. v. Sir Watts Horton*. It has been doubted by country gentlemen whether the poor are better maintained in large or small districts, though the former has been judicially

cially said in this court: In small divisions the officers are more attentive to their duty; and in the part of the country with which I am acquainted, the poor are better provided for in the small districts. Therefore as the usage in this case coincides with our idea on the policy, and as we are warranted by the adjudged cases on this point, we think it highly proper that the division of this parish, which has subsisted so long, should continue; and consequently that the order of sessions should be affirmed.—*Ashburst J.* Wherever it appears that for any length of time the parish has had the benefit of 43 *El.* it must be shewn that from the increase of population, or some other cause, it is impossible that they can continue to reap the benefit of that statute. But that is not the case here; and nothing can be stronger to shew that this parish cannot have the benefit of 43 *El.* than that in fact they have not had it as far back as any memory goes.—*Buller J.* Before a parish can be sub-divided into smaller districts for the maintenance of their poor, it must appear that they cannot have the benefit of 43 *El.* But it is material to consider the meaning of the phrase, that a parish cannot reap the benefit of that statute. It does not mean that it is absolutely impossible for them to maintain their own poor *as a parish*, for that would not be the case even if the parish were 100 miles in circumference, but that it is *inconvenient* for them so to do. Now in judging on a question of convenience, there can be no doubts on the facts of this case; for it is stated that for 60 or 70 years past, and perhaps for all preceding times, this parish have not maintained their own poor jointly. And the strongest instance of their having been subdivided for a long period is the circumstance of the parish at large having removed a pauper into this particular district, as a place liable to maintain its own poor separately. I entirely agree with my Lord Ch. J. that greater care is taken of the poor in small than in large districts. And if in any case we were to find that it was formerly inconvenient to the parish at large to maintain their own poor jointly, though it were convenient for them to do so now, we would not assist them in overturning the old practice; for that would operate as a discouragement to the efforts of individuals to reduce the poor rates which have succeeded in many small districts. I even go further, for though it should appear that a parish had enjoyed the benefit of 43 *El.* yet if they could not now conveniently maintain their own poor jointly, we would permit them to divide themselves, provided there be such legal divisions in the parish as are capable of supporting their own poor separately

parately under the provisions of the statute C. 2. — *Grose J.* In determining this question, I shall not proceed on any speculation of my own; for the act of parliament itself has supposed that the largeness of a parish may be a good reason for dividing it. Though if I were to give my own opinion of the policy of the law, I should not hesitate to say, that from my own experience I have found that the poor are better provided for in small than in large districts. The question here is, whether it does not appear that the parish cannot have the benefit of the statute of *El.* and I am clearly of opinion that on these facts they cannot. For in the first place it does not appear that the parish have ever as a parish maintained their own poor. And in the next place, it is stated that in 1764, a pauper was actually removed from the parish at large to this very township, which is an admission on their part that they had no right to call on this district to contribute to the general poor rate of the parish. Order of sessions confirmed. *Durnf. & East*, 3 V. 746.

E. 31 G. 3. K. v. Newell. Two justices allowed a poor rate for the parish of *St. Giles*, in *Reading*, including the hamlet of *Whitley*, *Berks.* The sessions on the appeal of *Thomas Newell*, confirmed the rate, and stated the following case:—The parish of *St. Giles*, *Reading*, lies partly within the borough of *Reading* and partly without. The hamlet of *Whitley* is that part which lies without the borough, is about 3 miles square, and has immemorially had a separate constable, and churchwarden, but no other church than that which is common to the parish at large. And the hamlet people have been used to attend the vestry-meetings of the parish at large at the church, but the people of that part of the parish out of the hamlet never attended the hamlet-meetings; for which hamlet-meetings to choose officers for the hamlet, notices were published in the church on the *Easter Sunday* in every year. From the year 1648 to the time of trying this appeal, the inhabitants of the hamlet part of the parish have had overseers of the poor separately appointed for the hamlet, and chosen at meetings of the hamlet people only; the number of which overseers has varied from that time. The hamlet have in every year had either two or three overseers, except in four different years at different intervals, when they had one. Such overseers have separately distributed and laid out the money within the hamlet, and their accounts have been separately kept, and separately allowed by the justices; and it does not appear that any interference has ever been made in the distribution or accounts by the payers in the borough

borough part of the parish, except at the general settlement of accounts as herein-after mentioned. The part of the parish lying within the borough has during the same time invariably had one churchwarden and three overseers; and such overseers of the borough part have acted upon their separate rates, and in their distributions and accounts, distinctly from the hamlet and the inhabitants or overseers of the hamlet, except that the overseers of the borough have afforded relief to the poor persons belonging to the hamlet part of the parish when resident in the borough, and have indemnified themselves out of the general fund arising from the poor rates, collected as well in the borough part as in the hamlet part of the parish, at the general settlement of accounts as hereinafter mentioned. Certificates have in various instances since the year 1709 been separately granted by, and directed to the overseers of the hamlet of *Whitley* to and by the overseers of divers other parishes; but it does not appear that a certificate has ever been granted by or to the overseers of *Whitley* to or by the overseers of that part of the parish which lies within the borough. Orders of removal have been made both from and to the hamlet of *Whitley*, and the paupers removed accordingly without appeal; particularly in 1755 an order of removal unappealed from was made from the parish of *St. Lawrence, Reading*; and in 1774 another order was made from the parish of *St. Mary, in Reading*: But it doth not appear that orders of removal have ever been made from or to the said hamlet to or from that part of the parish of *St. Giles* which lies within the borough. In 1649 the following order was made; viz. “April 23, 1649. Whereas at the
“quarter sessions holden for the county of *Berks* the 3d
“of *April* instant, the difference of the rates concerning
“the poor of the parish of *St. Giles* between the liberty
“of *Whitley* and the other inhabitants within the borough
“of *Reading* in the said parish was referred to us; we,
“upon hearing all parties, do order that the inhabitants
“within the liberty of *Whitley* shall, according to a former
“order, pay the yearly sum of 20 l. 4 s. 4 d. monthly ap-
“portioned according to the statute towards the relief of
“the poor of the parish of *St. Giles*; and that the inhabit-
“ants of the parish within the borough shall pay the
“yearly sum of 35 l. and in case the said sums shall not
“be sufficient for the relief of the poor of the parish,
“then the liberty of *Whitley* and the other inhabitants of
“*St. Giles* shall pay proportionably according to the former
“sums; and in the mean time the overseers of *Whitley*,
“having seen the accounts of the overseers of the parish of
“*St. Giles*, and finding the necessities of the poor do require
“it,

" it, shall pay forthwith their proportionable arrears." Signed by two justices. Ever since that order was made, the directions contained in it have been observed by the two parts of the parish of *St. Giles* in regard to their respective contributions to the poor, and they have paid accordingly, the hamlet $\frac{1}{3}$ parts, and the borough part $\frac{2}{3}$ parts of the whole expences incurred by the poor of both parts of the parish; *the whole expences when incurred, being computed into one integral sum*; the overseers of the hamlet part and those of the borough part have accounted with each other reciprocally, according to the above proportion. There has been for several years and now is a poor-house in that part of the parish of *St. Giles* which lies within the borough, in which the poor both of that part and the hamlet part of the parish have been jointly maintained, and the expences attending such maintenance have been defrayed by the two parts of the parish respectively, according to the proportions of 5 to 3. The overseers of the hamlet have uniformly, as far as any evidence could be had, made rates separately for the hamlet, and it does not appear that since the year 1648 the persons living in the hamlet have ever been charged by a rate made by the overseers of the parish till the rate now in question. In the year 1740 a rate was made in the hamlet, and acted under, entitled, " A rate made by the churchwardens and " overseers of the poor of the hamlet of *Whitley* in the " parish of *St. Giles, Berks*, as well towards the necessary " relief and maintenance of the poor of the parish as of " the hamlet, after the proportion of 9 d. in the pound, " charged on the inhabitants of the hamlet;" and such has been in general the mode of intitling all the rates made in the hamlet part of the parish to the time of the present rate. In pursuance of 26 G. 3. c. 56. separate returns were made by the parish of *St. Giles* and the hamlet of *Whitley*, as distinctly maintaining their own poor. The inhabitants of *Whitley* thinking themselves aggrieved by continuing the payment of $\frac{1}{3}$ of the general expenditure, in Sept. 1789 the officers of the hamlet gave notice to the officers of the borough part of the parish that they would not pay any rate made by the latter, or contribute to the relief of the poor within the borough part, (except of those belonging to the hamlet of *Whitley* which should from time to time be in the poor-house of the parish of *St. Giles*, for which expence they would contribute their fair proportion according to any rate which should be agreed upon,) it being their intent to apply all future monies raised by a poor rate intended to be separately made for the hamlet to the relieving of the poor only who should belong thereto separately,

separately, and without the interference of the parish of *St. Giles*. After this notice had been given, the hamlet of *Whitley* made a rate, entitled, "A second rate or assessment made the 2 d. of Jan. 1790, by the overseers of the hamlet of *Whitley*, for the necessary relief of the poor of the hamlet, at a proportion of 2 s. in the pound," which was duly published. And after this notice, the next rate but one made by the borough part of the parish of *St. Giles* was the rate in question, and which was entitled, "A rate for the relief of the poor of the parish of *St. Giles*, in *Reading*, including *Whitley* hamlet part of the said parish, &c." but it does not appear that any former rate for the borough part of the parish, made use of the words, "including *Whitley* hamlet part of the parish." The appellant *Newell* has no property within the parish of *St. Giles* within the borough, but is an inhabitant of the hamlet, and is charged with the rate appealed from, for his property within the hamlet. He is charged also to a rate which has been made by the overseers of the hamlet for the same period, which has also been regularly published. Mr. *Newell*, conceiving that he was liable only to the last rate, and not to the rate made by the overseers of that part of the parish of *St. Giles* within the borough, appealed against it.——L. *Kenyon*, Ch. J. The case cited from *Raymond*, 476, would have great weight in the decision of a case where the facts are the same: there the court proceeded on the ground of there being distinct officers, distinct rates, and distinct accounts; but in these districts there are not distinct accounts, but on the contrary there is one joint account for both. On the facts disclosed in this case it does not appear that those two districts, which compose one parish, cannot have, or is it stated that in point of fact they have not had the benefit of the 43 *Eliz.* but on the contrary, almost every fact in the case goes to establish this point, that they have squared their conduct rather by that statute than by the stat. of C. 2. For if they had proceeded on the latter, there would have been no communion between them, and they would have acted to all purposes as if they had been perfectly distinct parishes. It is indeed stated that there have been removals to *Whitley* from several different parishes; but it is not pretended that there ever was one from *St. Giles's, Reading*. Probably distant parishes may have been deceived by these districts having separate overseers, and have concluded from thence that they were separate parishes: but their mis-conception cannot vary the case. The material facts in this case are all included in those

those few lines which follow the order in 1649. To that order I only refer as a date in the case; for it is extrajudicial: but it is stated that "ever since that order was made, the directions contained in it have been observed by the two parts of the parish of St. Giles, in regard to the respective contributions to the poor; that they have paid accordingly, the hamlet $\frac{1}{4}$ and the borough part $\frac{3}{4}$ of the whole expences incurred by the poor of both parts of the parish; *the whole expences, when incurred, being computed into one integral sum*; and that the overseers of each part have accounted with each other." Then it appears to have been only one district, affording one integral fund for the poor of both parishes; and that when one part has over-paid its proportion the other has repaid it: but it was merely for their own convenience that they have subdivided themselves, as is frequently done in other parishes, where one overseer agrees to superintend one part of the parish and another the rest. But with regard to the proportions agreed upon in 1649, which each district was to pay; those indeed would not be binding at this time, if upon enquiry it should appear that they are unequal, considering the present circumstances of the parish. If that had appeared in the case, which is attempted to be inferred from it, that these districts cannot reap the benefit of the statute of *Eliz.* the objection would be well founded, but it appears that they have had the benefit of that statute. The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than 4 overseers: but that appeared to be the case in several other parishes, on enquiry directed by L. Mansfield in *K. v. Loxdale (a)*: So that though it may be a very material ingredient in these cases, it is not a decisive one. As therefore it is not stated as a fact in the case that these districts cannot reap the benefit of the 43 *Eliz.* but as it appears (on the contrary) from all the facts considered together, that they have had the benefit of it, we should overturn all the authorities if we were to determine that these districts might now be subdivided.—*Asbhurst J.* One material fact is wanting in this case, which occurred in the above case of *K. v. Sir W. Horton*, where it was stated that those townships could not reap the benefit of the 43 of *Eliz.* The justices at the sessions should have found that fact one way or the other. But, tho' they have not directly stated that fact, they confirmed

(a) *Ante*, this same title.

the rate which was made for both the districts together; which rather shews that in their opinion these places could have the benefit of 43 Eliz. What is decisive in this case is, that it does not appear that these districts have ever acted separately, but on the contrary that they have had one *joint sum* for the poor of both parts of the parish, and that they have settled their account at the end of each year.—*Grose J.* (a) Nothing is stated in this case to satisfy my mind that this parish cannot reap the benefit of 43 Eliz. but that on the contrary they have in point of fact had it, except in one or two instances where they have acted otherwise merely for their own convenience. In the first place, there have never been any removals from one district to the other; next, all the poor have been maintained together in one poorhouse; and the inhabitants of the hamlet have constantly attended the vestry meetings of the parish. Now these three circumstances convince me that this parish can have, and have had the benefit of the statute of Eliz. If they could not, the justices at the sessions should have said so: but they seem to have entertained a different opinion by confirming the rate.—Order of sessions confirmed. *Durnf. and East, 4 V. 266.*

If in any place there shall be no such nomination as is before appointed] That is, in *Easter week*, or within one month after *Easter*. For the clause doth not suppose, that no overseers at all are appointed within such place, but only not within such time; for the penalty is required to be levied by the *churchwardens and overseers*, or one of them.

Every justice of the division shall forfeit 5l.] This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise: But now the justices at large are all equally concerned; and therefore it seemeth, that this penalty cannot now be levied on any particular justice. But if in any place no overseer shall be appointed, a *mandamus* will go to the justices at large, to compel them to appoint.

Warrant for returning lists of overseers.

And that the justices may know what persons are fit to be appointed overseers, it is usual and requisite for them to issue their precepts in some such form as here followeth; *viz.*

(a) Buller J. absent.

West;

Westmorland. { To Henry Wilkinson, gentleman, high constable of Kenaal Ward, within the said county.

WE two of his majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said ward, in the form or to the effect, according as upon this our warrant is indorsed: Given under our hands and seals the — day of —

The form of the said high constable's warrant to the petty constable.

Westmorland, { To the constable of —
Kendal Ward.

BY virtue of a precept from two of his majesty's justices of the peace in and for the said county (one whereof is of the quorum) to me directed, you are hereby required immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand the — day of — in the year of our Lord —.

Henry Wilkinson, high constable.

And the form of an appointment of overseers, clear of the objections above mentioned, may be thus:

Form of an appointment of overseers.

Westmorland. WE two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby nominate and appoint A. O. and B. O., being substantial householders of the parish [or, township] of — in the said county, to be overseers of the poor of the said parish [or, township] according to the direction of the statute in that case made and provided. Given under our hands and seals (within a month after Easter).

X 2

But

Poor. (Overseers.)

But by a remedial clause, in the act of the 17 G. 2. c. 38. it is enacted, that *the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers.* s. 8.

Appeal against
the order of ap-
pointment.

If any person shall find himself aggrieved, by any act done by the said justices; he may appeal to the general quarter-sessions, whose order therein shall bind all parties. 43 El. c. 2. s. 6.

If any person] In the case of *K. v. Thomas Forest* and others, it was adjudged, that the parishioners as well as the overseers who are appointed, may appeal to the sessions against the appointment made by the justices: And the court said, it might happen that the parishioners might feel themselves aggrieved by the magistrates appointing improper persons, as for instance, persons who were insolvent, and such like. *Durnf. and East*, 3 V. 38.

To the general quarter sessions] This clause leaves the appeal at large, and doth not restrain it to the *next* sessions: But the above-mentioned act of the 17 G. 2. directs the appeal to be to the *next* sessions, but yet not in negative words, so as to say, that it shall be at the next sessions, and not otherwise. So that both may seem to stand well together; and then the sense of the statute of the 17 G. 2. well be this, That the appeal against any thing done or omitted by the overseers or justices, in cases wherein no appeal is given by former statutes, must be to the next sessions only, because the clause which gives the appeal, limits it to such next sessions; but in cases wherein an appeal is given by former statutes, such appeal may be to the next sessions according to this clause, or may be according to the directions of such former statutes. And in truth many acts of the churchwardens and overseers may be so contrived, that they cannot be known before the next sessions, and it would give them a great opportunity of fraud, if they might be safe by concealing such practices until the time of appealing to the next sessions should be expired. But then, in the case before us, there is no power to award costs, unless the appeal be to the next sessions by the 17 G. 2.

Overseer re-
fusing to take
the office.

M. 14 G. 2. K. and Jones. A person was indicted, for not taking upon him the office of overseer; and by the court it was held to be an offence indictable; for that although the statute appoints a penalty, yet that penalty is not for refusing to take the office; but for neglect of duty in that office: and where a statute commands a thing,
and

and appoints no penalty for disobedience, such offence is indictable as a contempt of the law. 2 *Seff. C.* 187. *Str.* 1146.

The overseers thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts, from their predecessors, and what money and materials shall be in their hands, and reimburse them their arrears. 17 *G.* 2. c. 38. s. 1. 11. 13.

Overseers general duty.

And they shall take order from time to time, with the consent of two such justices as aforesaid, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain them; and also for setting to work all such persons, married, or unmarried, having no means to maintain them, and using no ordinary and daily trade. Which said churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices, shall meet at least once a month, in the church, on Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and order it to be set down in the premisses: Upon pain that every one of them absenting themselves without lawful cause, from such monthly meeting, or being negligent in their office, shall forfeit for every default 20 s. to the poor; to be levied by some or one of the churchwardens and overseers, by warrant from two such justices, by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. Provided that if any person shall be aggrieved by any act done by the said churchwardens and other persons, he may appeal to the general quarter sessions, whose order therein shall bind all parties. 43 *El.* c. 2. s. 1, 2. 6. 11.

In the church] But the penalty for not meeting in the church shall not be inflicted on the overseers of extraparochial places; because they have no church to meet in. 8 *Mod. E.* 7 *G.*

II. Of settlements.

By a statute made in the 12 *R.* 2. (c. 7.) The poor were to repair, in order to be maintained, to the places where they were born.—By the 11 *H.* 7. c. 2. they were to repair to the place where they last dwelled, or were best known, or were born.—By the 19 *H.* 7. c. 12. to where they were born, or made last their abode by the space of three years.

Poor. (Settlements.)

years.—By the 1 Ed. 6. c. 3. this was explained to be, where they had been *most conversant* by the space of three years.—By the 1 J. c. 7. they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where they last dwelt by the space of *one year*; if that could not be known, then to the place of their *birth*.—So that there were two kinds of settlement all along; by birth, and by inhabitancy; first for any indeterminate time, next for three years, then for one year. And this last continued to the time of the statute of the 13 & 14 C. 2. c. 12. which reduced the residence from the term of one year, to the space of forty days. Which statute of the 13 & 14 C. 2. will often occur in the following sections, being the foundation of all the settlements as they stand at this day; upon which act there have been more cases adjudged, than upon any other act in the statute book.

But that I may treat distinctly, and as clearly as may be, concerning this subject of settlements, (after having first premised one general rule which controls almost all the cases of settlements, *viz* That *no settlement can be legal, which is brought about by practice or compulsion*; Read. Tit. Poor,) I shall proceed in the following method :

- i. Of persons having no settlement.
- ii. Of certificates.
- iii. Of settlement by birth, *viz.* of bastards, and others.
- iv. Of the settlement of children with their parents.
- v. Of settlement by apprenticeship.
- vi. Of settlement by service.
- vii. Of settlement by marriage.
- viii. Of settlement by continuing forty days after notice.
- ix. Of settlement by paying parish rates.
- x. Of settlement by serving a parish office.
- xi. Of settlement by renting ten pounds a year.
- xii. Of settlement by a person's own estate.

i. Of persons having no settlement,

Whereas the number of poor within England and Wales, is very great and burthensome; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another——it is enacted, that within forty days

days after any such persons shall come to settle in any tenement under 10 l. a year, two justices (s. Q.) may remove them to the place where they were last legally settled. 13 & 14 C. 2. c. 12. s. 1.

Poor within England and Wales] By these words of restriction, and the word [*such*] afterwards, which seems to have reference to those kinds of poor only, and by the direction of *removing them to the place where they were last legally settled*, which can only mean where they were last legally settled within the then kingdom; it may seem, that other poor, not belonging to *England or Wales*, are not within the regulations of this statute.

And in *Conrad's* case, T. 6 W. it was adjudged and declared as follows: A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were sent back by order of two justices. But by the court: The landing makes no settlement; and the order was quashed. And *Eyre J.* (*Holt Ch. J.* being absent) seemed to be of opinion, that this is a case omitted out of the statute. *Comb.* 287.

Foreigners landing in England.

And if there is a defect in the law with respect to the subjects of a foreign realm, the case of a *Scotchman* or *Irishman* in *England* seemeth to be not much different, except only when they shall become vagrants, for in such case they may be sent into *Scotland* or *Ireland*: But otherwise, if they be able to maintain themselves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two justices, as persons likely to become chargeable. By which means they seem to be in a better condition in *England*, than the *English* subjects: For that, not being removeable, until they be forced to ask relief, and so thereby become vagrants, as wandering abroad and begging; they may continue undisturbed, without the intanglements of a certificate, and consequently are in a better capacity of gaining settlements, if not for themselves, yet for their children born here, and for their servants and apprentices.

Scotchmen and Irishmen in England.

Within forty days] The statute of the 1 J. 2. requires, that such 40 days continuance shall not make a settlement, but from the time of delivering notice in writing; and by the 3 W. it must be from the time of the publication of such notice in the church: But it hath always been understood, that a person not removeable need not to give such notice; and that a person continuing 40 days *unremoveable*, and a person *not removed* for 40 days after such notice given and published, shall equally gain a settlement. Now the

following

An English woman marrying a foreigner.

following case happened, *E. 2 G.* between the parishes of *St. Giles* and *St. Margaret*: An *Englishwoman* was married to a foreigner, who had no settlement in *England*; the husband continued for the space of 40 days in a parish unremoveable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family for 40 days unremoveable, she did thereby gain a settlement: But by *Holt Ch. J.* Where a person stays 40 days in a place, whence he hath a right not to be removed, that gains a settlement; otherwise, where he only stays in a place, because they do not know where to remove him. And in this case, he said, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him starve. *1 Sess. C. 97.*

Some observations on the above.

But there is another thing to be considered. It appears, in that case, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's situation in the parish was not such as the law calls unremoveable, as if he had rented a tenement of 10*l.* a year; but that in fact he was removeable, if they had known whither to have sent him. But put the case, that he had rented a tenement of 10*l.* a year; or, which is the same thing, that a *Scotchman* or *Irishman* had rented a tenement of 10*l.* a year: the question is, Whether by continuing thereupon 40 days unremoveable, he would thereby have gained a settlement in pursuance of this statute? If it is answered in the affirmative, then this will follow; that if he comes to reside upon a tenement under 10*l.* a year, and gives notice in writing, and causes the same to be published as the law requires, and continues 40 days after such publication unremoved, he must by the same statute gain a settlement. And if so, a *Scotchman* or *Irishman* may settle himself and his family in 40 days time, in any parish whatsoever, where he can procure any little cottage to live in, by giving and causing to be published such notice as aforesaid. On the other hand, if we have recourse to the observation above mentioned, and say, that this statute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Irishman* can gain no settlement in *England* by virtue of this statute, and if not by this, then not by any other of the subsequent statutes concerning settlements, for that they are all relative thereunto and depending thereupon; that is to say, in these circumstances a *Scotchman* or *Irishman* can gain no settlement in *England*, neither by renting 10*l.* a year, nor by con-

continuing 40 days after notice, nor by apprenticeship, nor by service, nor by paying parish rates, nor by serving a parish office.—The practice seems to be universally allowed in favour of the former opinion.

ii. *Of certificates.*

Before we come to treat especially of settlements, it will be necessary to speak somewhat of certificates, as affecting settlements several ways.

By the 13 & 14 C. 2. c. 12. Power is given upon complaint of the churchwardens or overseers, within 40 days after a person is come to settle on any tenement under 10 l. a year, unto two justices (1 Q.) to remove such person to the place where he was last legally settled, *unless he give sufficient security for discharge of the parish, to be allowed by the said justices.* s. 1.

And by the 8 & 9 W. c. 30. it is enacted as follows : Forasmuch as many poor persons chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is therefore enacted, *That if any person who shall come into any parish or place there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the parish or place where he shall come to inhabit, or to any of them, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, township or place, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses; thereby owning and acknowledging the person mentioned in the said certificate to be an inhabitant legally settled in that parish, township, or place : Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given : And then and not before, it shall be lawful for such person, and his children, tho' born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought.* s. 1.

By the 9 & 10 W. c. 11. No person who shall come into any parish by such certificate, shall be adjudged by any act what-

forever to have procured a legal settlement in such parish, unless be shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute some annual office in such parish, being legally placed in such office.

By the 12 An. st. 1. c. 18. s. 2. *If any person shall be an apprentice bound by indenture, or be a hired servant, to any person who came into or shall reside in any parish, township, or place, by means or licence of such certificate, and not afterwards having gained a legal settlement there; such apprentice or servant shall not be adjudged thereby to have any settlement in such parish, township, or place; but shall have their settlements in such place as if they had not been apprentices or servants as aforesaid.*

And by the 3 G. 2. c. 29. *The witnesses who attest the execution of the certificate by the churchwardens and overseers, or one of the said witnesses, shall make oath before the justices who are to allow the same, that such witness or witnesses did see the churchwardens and overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate; and that the names of such witnesses, attesting the said certificate, are of their own proper hand writing: Which said justices shall also certify, that such oath was made before them. And every such certificate so allowed, and oath of the execution thereof so certified by the said justices, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof. s. 8.*

The form of which certificate may be this :

To the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WE the churchwardens and overseers of the poor of the parish of Orton in the county of Westmorland, do hereby certify, own, and acknowledge, that A. L. yeoman, is an inhabitant legally settled in our parish of Orton aforesaid. In witness whereof we have hereunto set our hands and seals, the ——— day of ——— in the year of our Lord ———

Attested by
A. W.
B. W.

A. B.	}	Churchwardens.
C. D.		
E. F.	}	Overseers of the poor.
G. H.		

We J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the said county of Westmorland, do allow of

of the above written certificate. And we do also certify, that A. W. one of the witnesses who attested the same, hath this day made oath before us the said justices, that he the said A. W. did see the churchwardens and overseers of the poor of the parish of Orton aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of A. W. and B. W. who are the witnesses attesting the said certificate, are respectively of their own proper hand-writing. Given under our hands this ——— day of ———

Certain general rules concerning certificates.

In the case of *K. and St. Ives, H. 3 G. 2.* A *mandamus* was moved for, to compel the churchwardens and overseers to sign a certificate; but the court rejected the motion as a very strange attempt. 2 *Seff. C.* 128.

A parish is not compellable to grant a certificate.

The statute doth not require any particular direction; and therefore it is equally effectual, whether addressed to any particular place, or addressed in general terms, or not addressed at all, provided it contains an acknowledgment of the settlement of the persons certified for. As in the case of *St. Nicholas in Harwich and Woolverstone, H. 15 G. 2.* The pauper came into the parish of *St. Nicholas in Harwich*, with a certificate from *Woolverstone*, addressed to the parish of *Harwich near Dover court*. The sessions were of opinion, as there was a mistake in the name of the parish in the address of the certificate, that *Harwich* could not be obliged to receive the pauper. But upon debate in the court of king's bench, it was ruled they were: For it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of *Woolverstone*, and is conclusive against them for all the world. *Str.* 1163. *Burrow's Settl. Cas.* 171. [But whether the parish of *St. Nicholas* might have been obliged to receive that certificate, directed not to them but to another place, is a question not determined.]

A misdirection will not vitiate it.

E. 14 G. 3. *St. Michael's and Tamworth.* Two justices by their order remove *Sampson Watkins* from the parish of *St. Michael's* to the parish of *Tamworth*, and the sessions upon appeal confirm that order, and state specially, That *Samuel Watkins* father of the pauper *Sampson Watkins* went from the parish of *St. Michael's* to reside in *Tamworth*, and brought with him a paper writing purporting to be a certificate, in the words and figures following: "To the churchwardens and overseers of the poor of the parish of *Tamworth* in the county of *Stafford*. We the churchwardens and overseers of the poor of the parish of *St. Michael*

Certificate to be signed by a majority of the churchwardens and overseers.

“ *Michael* in the city of *Coventry*, do hereby own and ac-
 “ knowledge *Samuel Watkins* and family to be inhabitants
 “ legally settled in our said parish of *St. Michael*, and that
 “ we will own them as such, at any time or times here-
 “ after. In witness whereof, we have hereto set our
 “ hands and seals the 16th day of *May*, in the year of our
 “ Lord 1727. *Thomas Dagley*, *John Hollyer*, church-
 “ wardens. *John Gill*, *Samuel Edwards*, overseers of the
 “ poor. Attested by *Ralph Whitehead*, *John Bryan*. Al-
 “ lowed by us whose names are underwritten, being two
 “ of his majesty’s justices of the peace for the city and
 “ county of the city of *Coventry*. *Abraham Ower* mayor;
 “ *Henry Cockram*.” That the said *Samuel Watkins* con-
 tinued to reside in the said parish of *Tamworth*, and had a
 son born there, to wit, *Sampson Watkins* the present pauper.
 Which *Sampson* was afterwards bound apprentice to *John*
Hunter in the said parish of *Tamworth* for five years, and
 served him there the whole time under the indenture;
 That afterwards the said *Samuel* the father came back in-
 to the parish of *St. Michael*, and in *May* last the pauper
Sampson came into the said parish of *St. Michael*, and re-
 sided with his father, until he was removed by the order
 above stated to the parish of *Tamworth* aforesaid; from
 which order *Tamworth* appealed. Upon the appeal, it ap-
 peared, that there has been a uniform and constant usage
 in the said parish of *St. Michael*, to elect annually six
 churchwardens and four overseers. And the sessions being
 of opinion that the said paper writing purporting to be a
 certificate, and executed only by four of the parish officers,
 was not a valid certificate, and consequently that the pau-
 per was at liberty to gain a settlement at *Tamworth* by vir-
 tue of the apprenticeship, confirmed the order of the two
 justices. It was moved to quash both these orders, for
 that the justices had made an erroneous determination in
 holding this writing not to be valid. On shewing cause
 against quashing the orders, it was insisted that the certifi-
 cate was insufficient, and not within the description of the
 act, which is express that it must be under the hands and
 seals of the churchwardens and overseers, or the major part
 of them. Now here were ten, and only four have signed
 the certificate. On the contrary it was argued for quash-
 ing the orders, that the certificate is regular in the form
 and upon the face of it, and allowed by two justices, and
 completely proved. *Tamworth* could not know, nor had
 any reason to suspect, that four were not a majority of the
 whole number. And if these in fact were not the major
 part, it was a gross fraud and imposition upon *Tamworth*.

L. Mans-

L. Mansfield was not in court. The other three judges thought it a hard case upon *Tamworth*, but they held themselves to be bound down by positive law. The statute is express and positive, that the certificate must be under the hands and seals of the churchwardens and overseers of the poor or the major part of them. And as to fraud, the court cannot presume fraud, if it be not stated. (But Mr. *J. Ashurst* thought the justices might have considered it as a fraud.) *Burr. Settl. Cas.* 770.

Also in the case of *K. v. Margam, E. 27 G. 3.* Two justices removed *John Thomas* and his wife from *Langunwd* to *Margam*, which they adjudged was the place of their last legal settlement by virtue of a certificate. And the order was confirmed at the sessions on the merits. On its being stated by the sessions that the certificate was not signed by a majority of the churchwardens and overseers of *Margam*, the court of king's bench quashed the orders. *Durnf. and East, 1 V.* 775.

H. 8 G. 3. Wooton St. Laurence and Michelsdever. And also to be signed by two justices.
The parish officers of *St. Laurence* gave to *Thomas Pryor* the pauper, a common printed form of a certificate, acknowledging him to be settled in the said parish of *St. Laurence*. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of this removal. It was urged; that this certificate, not being signed by the justices, was not binding. On the contrary it was urged, that it was a full acknowledgment that the pauper was their parishioner; and the parish of *St. Laurence* having all along submitted to it, they are concluded from disputing it. And the parish ought to be bound by the act of their overseers, who are of their own chusing. Many acts or even omissions of the parish officers may bind their parish. But here is a solemn acknowledgment under their hands and seals, that the pauper was settled in *St. Laurence*.—But by *L. Mansfield* and the court: A certificate cannot conclude the parish, unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate. They have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularised. This certificate wants them. Therefore it is no certificate within the act. And if it is not a certificate within

within the act, it cannot conclude the parish. *Burrow's Settl. Cas.* 581.

Proof of the execution to be made before the justices.

H. 13 G. 3. Ashton Keynes and South Cerney. The attestation of the certificate was thus: "Attested by *Anthony Brown* + his mark, *Paul Jenkinson*." The allowance of the justices was, "We two of his majesty's justices of the peace for the said county do allow of the above written certificate: And we do also certify, that the said *Paul Jenkinson* came this day before us and made oath, that he was present with the other witness above mentioned, and did see the said churchwardens and overseers of the poor severally sign and seal the said certificate, and that *his* name is of his own proper handwriting." It was objected, that this was not a proper certificate, because the name or mark of *Anthony Brown*, one of the witnesses attesting the execution of it, was not proved before the justices to be of that witness's own proper handwriting; whereas in this case *Paul Jenkinson*, one of the witnesses, only proves that his own name is of his own proper handwriting, but there is no sort of proof, either by him or any one else, of the handwriting or mark of *Anthony Brown* the other witness. But the whole court were extremely clear that this was sufficient proof of *Anthony Brown*'s attestation. *Jenkinson* swears, that he was present with *Brown*, and did see the churchwardens and overseers severally sign and seal the said certificate. *Bur. Set. Cas.* 725. [The distinction seems to be this: The justices are called in upon a twofold account: first, to allow of the certificate, if they think proper; and secondly, to examine the witnesses concerning the execution. The first is necessary; because without their allowance the certificate is not good: But the second is not necessary, for if they do not examine the witnesses at all, the certificate is valid; the examination of the witnesses being only intended to save those witnesses upon occasion the trouble of attending, sometimes perhaps at a great distance, to prove the execution of the certificate. And so the statute expresses it, that *the certificate so allowed, and oath of the execution so certified by the justices, shall be deemed in all courts whatsoever as duly and fully proved and received as evidence without other proof thereof.* The reason in the present case why the proof of the attestation is so cautiously expressed is obvious, namely, because one of the witnesses is a marksman; and it would be absurd to swear that the name of a person who cannot write is of his own proper handwriting.]

In the case of *Sherborne and Thornford*, E. 15 G. 2. *Humphrey Eyres*, father of *George Eyres*, the pauper, came by certificate from *Thornford* into the parish of *Sherborne*, with his wife and family; by which certificate, the said *Humphrey* and his wife and family were owned to be legal inhabitants of *Thornford*. In about two years afterwards, his wife died, and shortly after he married a second wife, by which second wife he had the pauper *George Eyres*. Which said *George*, when he was about 16 years of age, was hired for a year, and served that year in the said parish of *Sherborne*. The principal question was, Whether the son of a certificate person, born after the certificate, can gain a settlement otherwise than a certificate person himself can? And by the court, The 8 & 9 W. c. 30. extends not only to the certificate man himself, but likewise to all his family and all his children, whether born before or after the certificate. And the 9 & 10 W. c. 11. declares what shall gain them a settlement in that parish to which they come by certificate, and restrains it to two methods only, which it specifies: and service is neither of these two methods to which it is restrained. *Burr. Settl. Cas.* 182.

A certificate extends to children born after the granting thereof.

So in the case of *Bray and Shottesbrooke*, H. 19 G. 2. The father of the pauper *James Gould* came by certificate from *Shottesbrooke* to *Bray*; after which, the said pauper was born, and at the age of 20 years was hired for a year and served the same in *Bray*. It was objected, that the son being born after his father came from *Shottesbrooke* to *Bray*, cannot be considered within the words of the act as coming into the parish by certificate, and being 20 years of age he ought not to be considered as part of his father's family and dependent upon his settlement. But by the court, The above case of *Sherborne and Thornford* is in point, and was settled upon good reason; because as the son has the advantage of the certificate, and cannot be removed until actually chargeable, so he ought on the other hand to be bound by the terms of it. *Bur. Settl. Cas.* 259.

And the like was adjudged in the case of *Buckingham and Maids Moreton*, H. 25 G. 2. As a point clearly determined and settled. *Bur. Settl. Cas.* 374.

T. 32 G. 3. *K. v. Darlington*. *Sarah* the widow of *T. Milburn*, and her seven children were removed from *All Saints in Cambridge* to *Darlington* in the county *P. of Durham*. The session confirmed the order, and stated the following case. That *John Milburn*, the grandfather of the pauper's husband, being settled at *Darlington*, came to *All Saints* under a certificate from *Darlington*, dated 13th

A certificate does not extend to grand-children.

July 1736. During his residence there (amongst other children) he had a son named *Thomas*, who lived in *All Saints* as part of his father's family, except for one year, during which he lived as a hired servant with one *Collett* in *All Saints*; after which service he returned to his father, and afterwards married and had several children, and (amongst others) *Thomas* the husband of the pauper *Sarah*; which *Thomas* lived in *All Saints* till the time of his death. The last mentioned *Thomas* when of the age of 14 years, was hired to, and lived as a servant with Mr. *Brooks*, for three years in *All Saints*. *J. Milburn*, the grandfather, some time before the grandson's service with *Brooks*, returned with his wife to *Darlington*, leaving behind his son *Thomas* with his family, and amongst them his grandson *Thomas*. The grandfather and his wife died at *Darlington*. Neither *Sarah* the pauper, nor any of her children, has since the death of *Thomas* the husband done any act to gain a settlement.—*L. Kenyon* Ch. J. If this question were at rest, either by reason of decided cases, or by the general opinion of *Westminster-Hall*, I should not be inclined to disturb it now. But I perfectly well remember, that when the *Taunton* (a) case was argued, so far from the profession acquiescing in what was thrown out by the three judges immediately after the argument, great doubts were entertained about it. And I infer the very reverse of what has been now attributed to those judges, that they afterwards continued of the opinion which they first threw out; for having hinted a loose opinion respecting the operation of the certificate, when they came to consider the case more maturely, they desired not to be bound by what they had said upon that point upon the former occasion, expressly saying, that it was unnecessary for them to enter into the question. In this case two questions have been made, 1st, Whether by the grandfather's returning to *Darlington* there was an end to the certificate? I am strongly inclined to think that that was not an abandonment. If all the family had indeed removed back, that would have been an abandonment; but as his son was left behind, it was a sort of pledge that the certificate was not intended to be abandoned. It is not necessary however to determine upon that point, because on the other question I am prepared to give a decisive opinion. And my opinion is founded on the words and fair meaning of 8 & 9 W. 3. c. 30. By the words of that act, the parish to which the certificate is granted, is obliged to receive the certificated person is-

(a) *Post*, this same head,

gether with his or her family. Now what is the fair legal import of the word *family*? It is true that in construing a will, and where it is the intention of the testator that it shall extend beyond *the immediate children*, it may have that operation: but that is not the sense in which it is used in this act. In common parlance, the family consists of those who live under the same roof with the *pater-familias*; those who form (if I may use the expression) his fire-side. But when they branch out and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son on account of the positive words of the act of parliament, he being a part of the father's family (*b*); but when he himself becomes the head of a family, then the words of the statute, publick policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. I am not alarmed at the argument that this tends to the separation of children from their parents; for that is usual with persons in that station of life, who not being able to gain a livelihood at home, are obliged to go abroad into the world, either as servants or apprentices, after they have passed the age of nurture. It is as beneficial to themselves as it is to the community that it should be so; and their parents themselves will, if they judge rightly, form the same judgment. And this is not a singular instance in which children are taken from their parents; for in the case of parish apprentices, the children are put out by the parish officers, under the superintendance of magistrates, even without the consent of parents. If this point had been before decided, as was supposed, I should have adhered to the decision; especially as according to the observation which *L. Mansfield* frequently made upon these cases, certainly is essential for the guide of the justices who are to carry these laws into execution. But I am not aware of any authority against our opinion; for I know that the *Taunton* case was not considered as deciding the point, that a certificate extends to grandchildren; and this point was not made in *K. v. St. Mary Westport* (*c*). Giving full effect to the certificate as far as the words of the act, and the intention of the legislature go, I think it meets with its boundary line, when it has protected the family of the certificated person; that is, all those who

(*b*) *K. v. Sherborne*, *K. v. Bray*, and *K. v. Buckingham*, ante, this same head.

(*c*) *Post*, this same head.

live with the *pater-familias*; and consequently that this grandchild, who was the son of the head of a distinct family, was not prevented gaining a settlement in *All Saints* by hiring and service.—*Buller J.* This case gives rise to two questions; 1st, Whether the certificate were at an end by the grandfather's returning to *Darlington*? 2dly, Whether grandchildren be within the meaning of the certificate at all. On the first point, I think that the certificate was at an end by the grandfather's return; it was originally granted to him. The man to whom a certificate is granted, is the person whom the legislature had in view; and being granted to him according to the statute, it rightly includes his family; but his family are *those only who live with him*. And as it happens in the course of time, that some of the children separate from the father, if the father himself return to the parish granting the certificate, I think that the certificate is at an end as to all of them. On the 2d question, I perfectly agree with my Lord.—*Grose J.* wished to be understood to give no opinion on the first question; and on the other question he expressed himself to be clearly of the same opinion.—Both orders quashed. *Durnf. & East, 4 V. 797.*

A certificate is conclusive against the parish certifying.

M. 9 An. Honyton and St. Mary Axe. The question was, whether the parish granting the certificate was bound thereby as to the parish only to which the certificate was granted, or concluded as to all parishes whatsoever? *Parker Ch. J.* delivered the opinion of the court: Before the statute, a certificate was only an evidence of a private undertaking between the parties, in the nature of a contract; but now it is a solemn acknowledgment, like the conveyance of a fine; and thereby the party is owned to be legally settled there: and as all other parishes on this certificate are bound to receive him, so the parish that certifies is concluded as to all other parishes. 2 *Salk. 535. Feby, 1777.*

T. 5 G. New Windsor and White Waltham. The pauper being settled in *White Waltham*, where he had lived for two years with a woman who was reputed his wife, went with a certificate from *White Waltham* owning them as husband and wife into the parish of *New Windsor*, where they had six children. The man dies, and the woman swearing they had never been married, the justices adjudge the children to be bastards, and settled in *New Windsor* where they were born. But by the court, The certificate is conclusive to the parish of *White Waltham*, and they are not to be admitted to dispute the validity of the marriage, and therefore the six children, being actually chargeable

able to *New Windsor*, must be sent to *White Waltham*.
Str. 186.

T. 19 G. 2. *Headcorn* and *Maidstone*. The parish of *Maidstone* gave a certificate to *Headcorn*, acknowledging *Richard Burden* and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which, *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded, that it would be hard that they should be forced to take two wives, and different children. But by the court, The parish that certifies must take care for whom they certify; and the certificate is conclusive. The parish of *Maidstone* have by this certificate expressly acknowledged the said *Mary* to be their legal inhabitant; and the parish of *Headcorn* were thereupon bound to receive her. Therefore when she becomes chargeable, the parish of *Maidstone* are obliged to provide for her and her children by *Burden*. *Maidstone* say they were deceived: But it was their own fault or folly if they were so; and they deceived *Headcorn*. 2 Sess. C. 200. Str. 1233. Bur. Sett. Cas. 253.

H. 13 G. 3. *Toslock* and *Iflame*. Case specially stated: That *Edward Parkinson*, otherwise *Ferman*, was born at *Toslock* of the body of *Elizabeth Parkinson* spinster, an inhabitant of the parish of *Toslock*; and that *Edward Ferman* legally settled in the parish of *Iflame*, but then residing in *Toslock*, was the putative father of the said child: That soon after the birth of the said child, *Elizabeth Parkinson* was married at *Toslock* to the said *Edward Ferman*: That some short time after the said marriage, the parish officers of *Toslock* warned the said *Edward Ferman* to get a certificate from *Iflame*; whereupon *Edward Ferman* applied to the parish officers of *Iflame* for such a certificate for himself, his wife, and his son, without informing them that the said *Edward* the son was born a bastard, and that they knew nothing of it that he was so: That *Iflame* granted a certificate, acknowledging *Edward Ferman*, *Elizabeth* his wife, and *Edward* their son, to be their parishioners. It was contended, that the certificate was improperly obtained, by the suppression of a fact which ought to have been disclosed at the time when the certificate was asked for; and that there never was a case, where the certificate was held to be conclusive when obtained by fraud on the suppression of facts, but only where they have granted them by mistake; for against mistake they might have been guarded.

But it not appearing that the parish officers recommended to him to get a certificate for the son, nor that he to whom the certificate was granted desired the son to be included in it, the certificate was held, on the authority of the case of *Headcorn and Maidstone*, to be conclusive. *Bott. 392. Bur. Set. Cas. 737.*

A certificate is conclusive between the parish certifying and the parish to which it is granted, although not delivered till after the removal.

M. 20 G. 3. Fringsford and Buckingham. Mary Swift widow, was removed from *Fringsford* to *Buckingham*; the sessions confirmed the order and stated specially: That the pauper and her father jointly purchased a house for 14l. or 16l. in the parish of *Buckingham*: That it was surrendered to the father during his life, with the remainder to the pauper in fee; that the father was admitted: That in the father's lifetime the pauper married *Robert Swift*, who was settled at *Fringsford*: That after the father's death the pauper alone was admitted, and she and her husband resided upon the premises until his death: That on 14th June 1776, *Fringsford* granted a certificate to the pauper, which was delivered to her and kept in her possession, and not delivered to *Buckingham* till after the removal: That the pauper after the granting the certificate, and before the removal, resided upon the premises upwards of 40 days.—Upon hearing the appeal, the certificate was offered as conclusive evidence against *Fringsford*, so as to prevent their setting up any settlement obtained in *Buckingham*, previous to the granting thereof. But the court were of opinion, that the certificate under these circumstances did not prevent the pauper gaining a settlement at *Buckingham* by such estate and residence, and confirmed the order.—It was moved to quash these orders, on the ground that the detention of the certificate by the pauper till after her removal, granted by the parish removing, and of which they could not be ignorant, would not entitle them to avoid the effect of it when produced at the trial against them, but that they were thereby concluded.—No cause being shewn to the contrary, both orders were quashed. *Cal. Cas. 64.*

A certificate is not conclusive against a third parish.

E. 3^d G. 3. K. v. Lubbenham. Two justices removed *Elizabeth Hutchins*, wife of *Thomas Hutchins*, (who was then absent,) and *Hepziba* her daughter, from *Lubbenham* to *Oxendon*. On appeal, the sessions quashed the order, and stated the following case: The pauper *Elizabeth* was married about 17 years ago to *J. Hutchins*, who was settled at *Oxendon*. Two years afterwards he was convicted of a robbery, and condemned, but reprieved on his inlisting as a soldier: He went abroad, and 5 years after his wife *Elizabeth* (hearing that he was dead) was married to *Thomas Ponton* at *Lubbenham*. About a twelvemonth after

Hutchins

Hutchins returned. Whilst the said *Ponton* and *Elizabeth* were residing together at *Threddingworth* as man and wife, they went together to *Lubbenham* for a certificate to *Threddingworth*, who granted one accordingly; acknowledging the said *J. Ponton* and his wife (without mentioning her christian name) to be legally settled in *Lubbenham*, and they returned with it to *Threddingworth*. *Ponton* was never married to any other person but the said *Elizabeth*. *Hepziba* was born during their cohabitation at *Lubbenham*, and there baptized as the daughter of the said *J. Ponton* and *Elizabeth* his wife. It was contended in support of the order of sessions, That the parish granting the certificate were concluded, not only as to the parish to which it was immediately granted, but also as to every other; and the cases of *Honiton v. St. Mary Axe* (a), *K. v. Headcorn* (b), and *K. v. New Windsor* (c), were cited. On the other side it was insisted (*inter alia*) that the certificate is only conclusive against the parish certifying as to the parish to which it is granted, as between those two parishes only it operates as an estoppel, and that estoppels are not to be favoured; and cited the cases of *K. v. Higher Walton* (d), and *All Saints v. St. Giles* (e).—*L. Kenyon* Ch. J. In the first place, without considering the effect of the certificate, there is no doubt but that the second marriage was void, and consequently that the settlement of the pauper *Elizabeth* continued where her first husband was settled. But it is stated that she afterwards contracted a marriage *de facto* with a person whose settlement was at *Lubbenham*; and that she and her second husband applied to *Lubbenham* for a certificate to *Threddingworth*, which was accordingly granted. And therefore the question is, whether that certificate be conclusive against *Lubbenham* as to all the world, or only as between the two contracting parishes? Now estoppels in general are not to be favoured; they are to be extended only as far as the positive rules have gone; because the tendency of them is to prevent the investigation of the truth of the case. It is reasonable that a certificate, which is a kind of estoppel, should protect the parish which acts immediately on the faith of it; by the act of the officers of *Lubbenham* the parish of *Threddingworth* were induced to receive the parties into their parish; but there is no necessity for extending the estoppel any further. In all the cases, except that of *Honiton* and *St. Mary Axe*, the ques-

(a) *Ante*, this same title.

(b) Ditto.

(c) Ditto.

(d) *Post*, tit. Settlement by marriage.

(e) 5 *Salk*, 530^o.

tion arose between the parish granting the certificate and the parish to which it was given: That is the only case which extends the doctrine farther; and there it is said that a certificate is conclusive on the parish granting it as to all the world. But the reason given by L. Ch. J. *Parker*, "that as all other parishes are bound to receive the pauper, so the parish that certifies is concluded as to all other parishes," is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore as the reason on which that case was decided fails, we are delivered from the authority of it. Then what reason is there why the truth of the case should not be enquired into? No injury is thereby done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would indeed be a hardship on *Threddingworth* parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against *Lubbenham*: but that reason does not extend to this parish. Therefore on that ground, and on the principle that estoppels are not to be favoured, the parish of *Lubbenham* ought not to be precluded from enquiring into the truth of the case: and according to the truth of the case it appears, that the pauper *Elizabeth* was settled at the place of her first husband's settlement. I am therefore of opinion, that the order of sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard. *Ashburst*, *Buller*, and *Grose*, J. delivered their opinions to the same effect.—Order of sessions quashed as to the mother, and affirmed as to the child. *Durnf. and East*, 4 V. 251.

A certificate is not binding against a subsequent settlement.

In the case of *Harrison* and *Lewis*. A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law. 3 *Salk.* 253.

A certificate is not restrictive from gaining a settlement in a third parish.

M. 14 G. 2. *Petbam* and *Dymchurch*. The pauper was bound apprentice to a certificate man in *Tenterden*, and after living with him there two years, was by him assigned over to a parishioner of *Lidd*, with whom he inhabited and served for the remainder of the seven years. And the court were all of opinion, that such assignment being good as to the purpose of a settlement, the apprentice gained a settlement in *Lidd* the uncertificated parish. *Str.* 1147.

In the *aforesaid* case of *Sherborne and Thornford, E. 15 G. 2.* it was observed by Mr. J. Denison (to which all the court agreed) that a certificate provides for the security of that parish only into which the certificate persons came to reside by virtue of such certificate; but doth not exclude a certificate person from gaining a settlement in another parish, in the same manner as any other person may do. *Burrow's Settl. Cas.* 186.

H. 21 G. 2. Silton and Wincanton. The father and mother of *John Milbourn* the pauper came from *Silton* with a certificate to *Wincanton*. The said pauper was afterwards born in *Wincanton*, and at twelve years of age was bound out by the parish of *Silton* apprentice to a taylor at *Horfington* for eight years, and served him there. The question was, whether the son of a certificate person, born in the parish to which his father came by certificate, and bound apprentice and serving an apprenticeship to a master in a third parish, gains a settlement in the third parish by such apprenticeship? By the court, The pauper in this case was a person at large, as to every other parish except *Wincanton*, to whom the certificate was delivered; and therefore he gained a settlement at *Horfington*. *Burr. Settl. Cases*, 269.

T. 28 G. 2. Horsley and Hollingfclough. *Horsley* gave a certificate to *Abraham Cope* and his family, who went with it to *Hollingfclough*, where his son the pauper was born. The pauper at twelve years of age went to *Peck*, and was hired and served for a year there; and then returned to *Hollingfclough*. The question upon this case was, whether the son of a certificate person, born in the parish to which his parent came by certificate, could gain a settlement in a third parish by a hiring and service for a year? And the court were clear that this gained a settlement in the third parish; and that the above case of *Silton and Wincanton* was in point, only with this immaterial difference, that there the son's settlement was gained by apprenticeship, and here by a hiring and service. *Burr. Settl. Cas.* 385.

T. 28 G. 2. High and low Bishopside and Dacre cum Buerley. *Jonathan Joy*, a taylor, being settled in *Menwith cum Darley*, came from thence with a certificate to the township of *High and low Bishopside*, where he resided for some years. Afterwards he purchased a freehold house for the sum of 10l. in the township of *Dacre cum Buerley*: Whereupon he left *Bishopside*, and went to inhabit in *Dacre cum Buerley*, to which place he carried his certificate, and delivered it to the proper officer there. During his residence at *Dacre cum Buerley*, *John Thackrey* the pauper was bound to him as an apprentice by inden-

A certificate extends no further than to the place where first delivered.

ture for 7 years; and served his apprenticeship accordingly with his said master, who all the time inhabited in his said house in the township of *Dacre cum Buerley*. The question was, whether he gained a settlement in *Dacre* by such apprenticeship? It was argued on the one side that he could not; for his master himself in that case resided under the certificate which he brought with him when he came from *Bishopside*, and consequently the apprentice could not gain a settlement with him at *Dacre*. Unto which it was answered, that the master did not reside as a certificate person at *Dacre*, because living upon his own estate there he needed not to have delivered any certificate, and the certificate which he did deliver could have no effect at *Dacre*, as it had before been delivered to *Bishopside*, which they ought to have kept for their own protection; and if a certificate had been necessary, he ought to have produced another certificate. And of this opinion was the court, and held that the apprentice gained a settlement at *Dacre*. Burr. Settl. Cas. 381.

E. 29 G. 2. St. Peter's in Nottingham and Wilford. The parish of *Boston* gave a certificate with one *Trentham*, to *St. Peter's*. The certificate man took the pauper *John Wright* to be his apprentice, and the pauper served him some considerable time in *St. Peter's*. Afterwards, *Trentham* the master removed to *St. Mary's*, where the apprentice served him about a year. The two justices and the sessions were of opinion, that the certificate extended to *St. Mary's*, though only directed to *St. Peter's*; and consequently, that the apprentice gained no settlement in *St. Mary's*. It was moved to quash the orders of the justices, because their opinion was contrary to the determination in the case of *High and low Bishopside*, viz. that a certificate extends to no other parish but that only to which it is given: And an apprentice gains his settlement by the last 40 days service; which, in the present case, was at *St. Mary's* to which parish the master was not certificated. And the counsel on the other side gave it up, as being exactly the same point with the cited case of *High and low Bishopside*. Burr. Settl. Cas. 391.

T. 30 & 31 G. 2. Great Torrington and Bideford. By a certificate from *Lancrafts*, *Mary Bray* came to *Bideford*, and inhabited there some years. Then she was bound apprentice by the officers of the parish of *Lancrafts*, and lived under the indenture, at *Great Torrington*, for several years. After the expiration of the apprenticeship, she hired for a year, and served that year in *Bideford*. The question was, whether by this hiring and service she gained a settlement

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A certificate is discharged by gaining a settlement in another parish.

at *Bideford*, to which place she had come by certificate ? And it was adjudged (the point being clearly given up, as in the former case), that having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at liberty to gain a new settlement in *Bideford*, as any uncertificated person could be. *Burr. Settl. Caf. 428.*

And the like was adjudged in the same term, in the case of *Keynsbam* and *Hanbam*. *Burr. Settl. Caf. 429.*

Although the statute of the 9 & 10 *W.* says, that no person who shall come into any parish by certificate, shall be adjudged by any act to have gained a settlement there, unless he shall really and *bona fide* take a lease of a tenement of 10l. a year, or execute some annual office in the parish; yet it hath always been holden, that a man may not be removed from his own, whether it come to him by descent, devise, or purchase; and continuing thereon forty days, he shall thereby gain a settlement, provided that in case of purchase the consideration *bona fide* paid amount to the sum of 30l.; as will appear fully from several cases hereafter following:

A certificate is discharged by an estate of a man's own.

H. 28 G. 2. Sudbury and Uttoxeter. *Thomas Bladon*, being settled at *Sudbury*, came by certificate with his wife and children to *Uttoxeter*. *Thomas* died there, and his wife and children remaining at *Uttoxeter* under the certificate, became chargeable, and were removed and sent back to *Sudbury*. In about a year after, *John Bladon*, one of the said children, was bound apprentice in the parish of *Uttoxeter*, and served out his time there. The question was, whether by such apprenticeship he gained a settlement at *Uttoxeter*? By *Ryder Ch. J.* and the court: The removal in this case to *Sudbury* did restore the pauper to a new right of gaining a settlement; for the certificate is as it were *functus officio*, and is discharged by the order of removal. It can have its effect but once; and after the removal back, it is totally at an end; and the certificate person is restored as fully to the capacity of gaining a settlement, as if there had been no certificate at all. The law is so far from looking upon a certificate as continuing after an order of removal; that the pauper cannot return to the place from which he was removed, without incurring a penalty. And it was adjudged that the pauper gained a settlement at *Uttoxeter*. *Burr. Settl. Cases, 373.*

A certificate is discharged by a removal.

T. 29 & 30 G. 2. Taunton St. Mary Magdalen and Taunton St. James's. *Robert Bagg*, the grandfather of the pauper, came with a certificate from *Taunton St. James's* to *Taunton St. Mary Magdalen's*. Afterwards he went back

What shall be deemed deserting a certificate so as to discharge the same.

back into the parish of *Taunton St. James's*, and there had *Robert* his son, the father of the present pauper. And afterwards *Robert*, the pauper's father, married in *Taunton St. James's*, and went and lived, with his wife and family, in a house in the said parish of *Taunton St. James's* apart from his father; and had issue *Robert* the pauper, born in *Taunton St. James's*. *Robert* the grandfather died in *Taunton St. James's*. Then *Robert* the father died. And *Robert* the pauper was bound an apprentice by the parish of *Taunton St. James's*, into the parish of *Taunton St. Mary Magdalen*: and there served his apprenticeship. It was urged, that by virtue of the certificate given with his grandfather to the said parish of *Taunton St. Mary Magdalen*, the said apprentice gained no settlement in *Taunton St. Mary Magdalen*, but continued settled in the parish of *Taunton St. James's*, which had given the certificate. But the court (without going into the question whether the certificate act extends to grandchildren, or whether the son of this certificate man was emancipated from his father's family or not, as these points were not necessary to be discussed in this case) delivered their opinion, that the certificate itself was of no force at the time of the grandson's being put apprentice in *Taunton St. Mary Magdalen's*, but was then totally at an end. For in so long a course of time, which was 54 years after granting the certificate, and after such a desertion, it was reasonable to conclude that there was an end of it. It was absolutely waved and deserted. And the father and grandfather of this pauper could not have gone to *St. Mary Magdalen's* again without a new certificate. It is a good deal like the above case of *Uttoreter*, where the certificate was considered as *functus officio*, and as if it had never at all existed; being in that case totally at an end, as being satisfied, and having had its full and whole effect, by the removal of the paupers (under an order of justices indeed) to the parish who had given that certificate. And in the present case, the certificate being at an end, the apprenticeship of *Robert Bagg* the pauper will have just the same effect, as if no such certificate had ever been given at all, or were any ingredient in the case; that is to say, the apprentice is settled in *Taunton St. Mary Magdalen's*. Burr. Settl. Cas. 402.

H. 5 G. 3 *Spotland and Castleton*. The pauper *John Hamer* was bound apprentice to a certificate man at *Castleton*, and served his master at *Castleton* for some years. Then he removed with his master to *Spotland*, where he served him 40 days and upwards; and then was married to a young woman whose parents lived in *Castleton*; and till the
expi-

expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the day time with his master in *Spotland*, but went and lodged with his wife at her parent's house at *Cassleton*. It seemed to be agreed by the court (independently of a certificate) that wherever the servant or apprentice lodges, there is his settlement. And in this case it was urged, that the certificate was out of the question. For by the apprentice residing with his master 40 days in *Spotland*, he had gained a settlement there; as they did not reside in *Spotland* under the certificate. Consequently, he came back from *Spotland* to *Cassleton* free from the certificate, just as if there had been no certificate at all. And by lodging there above 40 days, he gained a settlement there, subsequent to that he had gained in *Spotland*. On the other hand, it was argued, that the certificate was still subsisting, and the master's removal to *Spotland* was voluntary, and not under any order of removal. The master is not stated to have gained any settlement in *Spotland*. So that he continued a certificate man to *Cassleton*; and the apprentice was part of his family. By the court: The master, who was a certificate man at *Cassleton*, gained no new settlement in *Spotland*; and the pauper still remained an apprentice to this certificate man. The master may still go back to *Cassleton*, the parish to which he was certificated. Indeed, it hath been determined, that if a certificate person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force. The certificate subsists. And the apprentice remains part of his master's family. He was so at *Spotland*; and all along continued to be so. The certificate acts says, that the apprentice shall not gain a settlement in the parish to which his master came by certificate. But as this apprentice hath gained an intermediate settlement, he ought to be sent to that settlement which he hath intermediately gained. And the court were unanimous, that his settlement was at *Spotland*. Burr. Sett. Cas. 527.

T. 20 G. 3. *Frampton and Tretherne*. Two justices removed the wife and child of *Samuel Minett* from *Frampton* to *Tretherne*. On appeal, the sessions quash that order, and state the following case: In the year 1751, the parish of *Tretherne* granted a certificate to the parish of *Frampton*, acknowledging *Job Minett* and *Anne* his wife to be settled in *Tretherne*. Under which certificate they lived in *Frampton*

ten two or three years, when they voluntarily returned to *Tretberne*, and had afterwards a son named *Samuel* born there. *Job* the father continued to live in *Tretberne* for 17 or 18 years; when, having a relation in *Frampton* dead, he went by himself (his wife being dead) to possess himself of the effects, and remained there about six months, when being taken ill, he was by the parish of *Tretberne* recommended to *Gloucester* infirmary, and there died. But before he went to *Frampton* to take possession of his relation's effects, *Samuel* the son was hired for a year, and served the same in *Frampton*, and so continued for several years until after his father died. *Samuel* afterwards married and had a child, and his wife and child were the paupers that were removed from *Frampton* to *Tretberne*.—In support of the order of removal, the counsel observed, that in the case of *Taunton* the circumstances were very particular. The extraordinary length of time during which the certificate had slept was considered as a waiver of it, but they seemed to doubt of the law of that case: It has been settled, they said, in later cases (as in that of *Spotland*), that a voluntary removal of a certificated person from the parish to which he has been certified, will not vacate a certificate; and this, without any regard to any interval or length of time. If a pauper can, by length of time, desert or annul a certificate, how is the line of limitation to be drawn? If a month's absence from the parish will not do, will a year or ten years, or eighteen years? By analogy to the statute of limitations, twenty years at least ought to be required. Here, the certifying parish did not look upon the certificate as at an end; for they recommended the father to the *Gloucester* infirmary, considering him still as their own poor.—*L. Mansfield*: The exact circumstances of this case have not occurred before, though the principle of desertion by long disuse is to be found in that of *Taunton*. But, here, no faith was given by the parish of *Frampton* to the certificate as to *Samuel*, whom they never heard of till he came there as an emancipated person. This case to me seems much stronger than that of *Taunton*. *Willes* and *Abbott*, justices, of the same opinion. There are no reasons stated for the judgment in the case of *Spotland*, and it doth not appear either that the court meant to contradict, or that the decision did contradict, the case of *Taunton*. And the order of the two justices was quashed, and the order of sessions affirmed. *Douglas*, 402. *V. Cal. Caf. 77. S. C.* By the name of *Rex. v. Inhabitants of Frampton upon Severne*, in which the other parish is called *Tretberne*.

H. 22 G. 3. *Bedworth* and *Keel*. *Jane Peak* was removed from *Bedworth* to *Keel*; the sessions confirmed the order, and stated specially: That the pauper was born at *Bedworth*, where her father and mother resided under a certificate until their death; that she remained there after their death until she was about 7 years of age with her brother, who was named in the certificate, and then voluntarily went to *Keel*, where she was hired for a year, and served the same, and also two or three others in *Keel*, when she voluntarily returned to her brother at *Bedworth*. The question was, whether the pauper, after she returned to *Bedworth*, was to be considered as still under the certificate, or that under these circumstances, it was to be considered as having been abandoned?—*L. Mansfield* at first inclined to think that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate. But *Willes J.* thought that the enquiry here must be, whether the certificate was *functus officio*? The fact is, that the pauper returns voluntarily to the house in which she had before resided under the certificate, which belonged to her brother, who was at that time resident there under the certificate: It certainly was not discharged as to him, and there do not appear to me to be circumstances in the case sufficient to warrant us in saying, that it was so with respect to the pauper.—*L. Mansfield*. I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me. Both orders affirmed. *Cal. Cas.* 144.

T. 26 G. 3. *Newington* and *Mersham*. *John Small* and his wife and five children were removed from *Newington* to *Mersham*; the sessions quashed the order, and stated the following case: That the pauper's father resided at *Newington* under a certificate from *Mersham* when the pauper was born: That the father removed with his whole family to *Hea*, and stayed there two years; and from thence also removed with his whole family to *Strood*, where he continued about four years, when he died: That about two years after the death of the father, his widow went to *Newington* to keep her uncle's house, with whom she continued until his death, and afterwards lived at *Newington* till she herself died; she had been relieved by *Newington*, having gained a settlement there after her husband's death: That the pauper within a year after his father's death, went to *Newington* and hired himself for a year (being then unmarried), and served the same in *Newington*, and continued with the same master another year; and then was two years with the minister of the parish of *Newington*, and never gained
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a settlement elsewhere.—*L. Mansfield* : It is admitted that there may exist a case in which a certificate shall be considered as *functus officio*. Then the court ought to draw a line ; in doing which it will be material to consider what is the nature of a certificate. It seems to me, that a certificate given by the parish from which the pauper goes, to another parish, is an indemnity to that other parish from the consequences of permitting him to reside there ; therefore it has done its office the moment that residence is permanently at an end. A temporary absence for a particular purpose will not discharge it ; but when the pauper had left the certified parish for years, and neither party has had any reliance upon the certificate, then it has done its duty and has no longer any operation. In the present case, the pauper had left the certified parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged.—The other judges gave their opinions to the same effect ; and *Buller J.* said, that whenever a pauper returns to the certified parish again, they should require from him a new certificate. Order of sessions affirmed. *Durnf. and East, 1 V. 354.*

No more of a certified family can be removed back, than those that ask relief.

In the case of *Martlesham and Framlingham, T. 13 G. 3.* it came to be debated, whether any more of a certified family could be removed back, than the individual that asked relief ; but the cause went off upon another circumstance.—But *Mr. J. Aston* in giving his opinion said, that if several persons reside in a parish under the same certificate, the asking relief by a single one of them would not render the rest removable. The certificate act says, that the parish who gives the certificate shall receive and provide for the person mentioned in it, together with his family, whenever he or they shall happen to become chargeable or ask relief : and then, and not before, it shall be lawful for any such person, and his or her children, to be removed to the parish from whence such certificate was brought. And it must be adjudged by the justices, that such person is actually become chargeable, before they can legally make an order of removal. Now how can the justices be authorized to make such an adjudication upon a person who in fact is not become chargeable, nor ever has asked relief ? *Burr. Set. Cas. 738.*

H. 29 G. 3. K. v. St. Mary Westport. Thomas Pretty and his wife, and Elizabeth and James their children, were removed from Bradford to St. Mary's Westport, in Malmesbury, both in Wiltshire ; on appeal the order was confirmed, subject to the opinion of the court on the fol-

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lowing case. *Edward Pretty*, the grandfather of the pauper *Thomas Pretty*, together with his wife and family, went to reside in *Bradford* under a certificate from *St. Mary Westport* acknowledging them to be legal inhabitants, and promising to receive the said *Edward Pretty* with his wife and family *when they should be thereto requested*, unless they obtained a settlement elsewhere. The paupers resided together under the certificate in *Bradford* until removed by the present order. *Thomas*, the son of the pauper *Thomas*, some years ago married and took a house in the same parish, and resided apart from his father's family: He is since dead, and has left an infant son *John*, who now lives with his mother in *Bradford*, and is under 7 years of age. The paupers named in the order of removal never asked or received any relief from *Bradford*, or became personally chargeable, unless the pauper *Elizabeth* under the circumstances herein-after stated can be so considered; but *Thomas* the son, after the separation above mentioned, asked and received relief from *Bradford* during sickness; and since his death his infant son has not been maintained by his grandfather the pauper, but relief has been applied for by his mother for him, and occasionally granted by *Bradford* for his support, which was known to *Thomas* the grandfather. The pauper *Elizabeth* at the time of her removal was pregnant with a bastard child, of which she has since been delivered in *St. Mary Westport*.—By *L. Kenyon* Ch. J. Although this certificate is not in the usual form, yet as far as it relates to the question now before us, it must be considered as a common certificate. And the single question is, whether these persons, who have been removed, can in the fair sense of the words be said to have been actually chargeable to *Bradford*. Now it is negatived by the case that any of these parties received relief in person. But it is contended that they were *virtually* relieved, because the son and the grandson both received relief. But it must be observed that at that time they were not members of the family of the *pater-familias* now removed; they lived apart from him, and formed another family of themselves. Then it has been said, that a burthen has been thrown upon the parish by the relief of the son and grandson, and therefore that the grandfather was *virtually* chargeable, because the 43 *Eliz.* requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not *in all events* to maintain their grandchildren, &c. but only when they are of sufficient ability. Now the justices are the proper judges of that ability; and

and the grandfathers, &c. are only to be called upon by an order of justices. There is another section in the certificate act which throws some light upon this subject; that directs that every person who receives relief, *and the wife and children of such person cohabiting in the same house*, shall wear a badge on the shoulder; this therefore is a strong legislative interpretation of what is meant by the word "family" in that act, and it would be a very harsh construction of that law to say that the grandfather, when his son and grandson who lived in a different house from him received relief, could have been badged, or, as mentioned in the latter part of the same clause, sent to the workhouse. So that on the fair construction of this act of parliament, none of the persons removed by this order can be said to have been chargeable. And even if we could exercise any discretion upon the subject, we should not be inclined to restrain the operation of the certificate act. The case of *Walton v. Spark* (which has been cited) is very distinguishable from the present: there the condition of the bond, which was to indemnify the parish against the person therein named and his children, was broken. Then as to the circumstance of the daughter being with child; it is universally settled that that is not a sufficient ground for the removal of a certificate person. Perhaps it is rather a hard case, and we might wish the law to be otherwise in some instances. But indeed it is to be considered that, though the woman was pregnant, *non constat* that the child would be a bastard; and though it was probable, yet it was not certain, that any burthen would have fallen on the parish, for she might have been married before she was brought to bed.—*Ashburst J.* No doubt arises from the particularity of this certificate; for the promise by the certifying parish to receive the paupers when they shall be thereto requested, can only be taken to mean, when they should be *legally* requested. Now the persons mentioned in the certificate had a right to reside in *Bradford* under it till they became chargeable, when only the certifying parish could legally be requested to receive them. Then the question is, whether or not any of the persons removed, actually became chargeable in such a way as to warrant the parish of *Bradford* in removing them? Now it does not appear that any of them fall within that description. For as to the pregnancy of the daughter, it has been repeatedly determined, that a certificate person cannot be removed as being *likely* to become chargeable, but such person must be *actually* chargeable, and in such an instance as this the charge may be prevented by marriage. Then as to the relief which

was given to the son and grandson, it seems to me that that was not a sufficient ground to remove the grandfather and his family living under a separate establishment. But it has been said that the grandfather was bound to maintain his son and grandson: that is true under circumstances; but then he must be of sufficient ability, and called upon by an order. Now here the relief was not given on the application of the grandfather; and in order to extend the consequences of this relief to him, the parish should have first called upon him, when if he had refused, alleging his inability, it might perhaps have been tantamount to a relief of the grandfather. But as it appears here, we cannot say that it was a necessary act of the parish, it was a voluntary one, and perhaps the grandfather, if he had been applied to, might have relieved the son and grandson.—*Grose J.* The first question arises on the effect of the certificate. Although that is different from the common form, yet I have no doubt in saying that it can have no other operation than what it derives from 8 & 9 W. 3. c. 30. If it had, it would go a great way to defeat that statute. For that act directs that a certificate, given in the terms therein prescribed, shall oblige the parish granting it to receive the persons therein mentioned when they shall become chargeable, and that then they shall be removed. But this is an undertaking to receive the persons mentioned in it, *when they should be thereunto requested*: which is directly contrary to the statute. Therefore I think this is void, unless it be considered as a certificate within the act. The next question is, whether that which is stated in the order of removal, be true; namely, that the paupers were *actually* chargeable. Now that is negatived by the case, which states, that they were *not in fact chargeable*, unless we can say that they were so in law. Although this question has never been expressly decided, I agree with the opinion delivered by Mr. J. Aston, who was particularly conversant with this branch of the law. And notwithstanding it was extrajudicial, I cannot help paying a great respect to the opinion of so able a judge. If the whole of a certified family were removable because one of them only became actually chargeable, it would be attended with great inconvenience. As for instance, if there were three or four young men in the family who were able by their industry to procure a competent maintenance, and their sister became chargeable; it would be against the spirit of the act to make that a ground for removing them all. And I think the intent of the act will be fully answered by determining, that when any one of the certificated family

becomes chargeable, he only shall be removed : any other determination would defeat the true purposes of the act. Then as to the pregnancy of the daughter, no case has been cited to shew that a person under such circumstances can be removed ; and I think she was not removable on that account. Both orders quashed. *Durnf. & East*, 3 V. 44.

iii. *Of settlement by birth; viz. of bastards, and others.*

It is sometimes difficult to prove the place of the birth of a pauper. The two topics commonly made use of for this purpose are in their own nature inconclusive. The first question that is commonly asked a pauper is "Where were you born?" Unto which it is impossible for him to give a determinate answer ; and his testimony is more or less credible according to the means he has had of information. The *parish register* is a proof, not of the birth but of the christening ; which are not always in the same place : besides that the register is no evidence at all of the *identity* of the person. In the case of *Creech St. Michael and Pitminster*, E. 14 G. 3. the mother of the pauper was subpoenaed, but did not attend ; and no account was given of her being under any legal disability of attending. For which reason the sessions quashed the order of the two justices, as not being supported by the best evidence that the nature of the case would admit of. On the other hand, a copy of a register, taken from the parish register of *Pitminster*, was produced, "Christenings 1735, "John son of John Every and Mary his wife, baptized December 5." And *John Carter*, one of the witnesses, swore, that the pauper lived many years ago with him the said *John Carter* ; that *John Every*, who lived in *Pitminster*, and died long since, was considered as the pauper's father ; and that he knew *Mary Every*, who lives in *Pitminster*, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. On its being moved for a rule to shew cause why the order of sessions should not be quashed, L. *Mansfield* seemed to think, and so it was afterwards determined on shewing cause, that this evidence was sufficient. *Bur. Set. Cas.* 765.

i. *Settlement by birth of bastards.*

[Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered

considered of such as are first supposed to be bastards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under the title *Bastards*.]

A bastard child is prima facie settled where born: And this was the ancient genuine settlement; and a person could have no other, until he had resided for a certain time, as is aforesaid.

How far bastards are to be settled where born.

But this rule admits of divers exceptions; which are as follows:

(1) If a woman comes into a place by privity and collusion of the officers where she belongs, and is there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. *Cases of S. 66.*

Bastard born in a place by collusion.

And in the case of *Masters and Child, H. 10 IV.* It was ruled, that if a woman big with child of a bastard, and settled in one parish, is persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, though the child was not born there: But if a woman, with child of a bastard, come accidentally into one parish, and is persuaded by some of the parishioners to go into another parish, which she doth, and there is delivered, this shall not charge that parish which persuaded her. *3 Salk. 66.*

(2) Also, if a bastard is born under an order of removal and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *M. 10 An. Ickleford and Great Milton. 1 Sess. C. 33. Cases of S. 66.*

Bastard born after the order of removal is made out.

(3) So also, if the officers are carrying a woman by virtue of an order of removal, and she be delivered on the road *in transitu*; the bastard shall go with the mother where she is going, by virtue of the order, notwithstanding the birth. *E. 10 An. Jane Gray's case. Cas. of S. 66.*

Bastard born in removing.

(4) Again, In the case of *Much-Waltham and Peram, M. 8 IV.* A woman big with a bastard child was removed by order of two justices from *Much-Waltham* to *Peram*. Before the next sessions, she was delivered at *Peram* of a bastard child. At the sessions, *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Waltham*, and ordered her to be sent back thither. After which, an order was made, to settle the child at *Peram*; which it was moved to quash, because though regularly bastards must be maintained where born, yet in this case, where there seems to be a contrivance, it shall not be so.

Bastard born after the removal, and before the appeal.

The court seemed to agree to this, and a rule was made to shew cause, but none was shewed. 2 *Salk.* 474.

And further, In the case of *Westbury* and *Coston*, *H. 2 An.* A woman big with child was removed by order of the justices from *Westbury* to *Coston*; and, pending the order, before the next quarter sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston* as the place of his birth. But by the court; The birth at *Coston* did not settle the child there, because it was under an illegal order procured by *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And *Holt* Ch. J. said, Though here be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it. 1 *Salk.* 121. 2 *Salk.* 532.

Bastard born in
a state of va-
grancy.

(5) So also, By the statute of the 17 G. 2. c. 5. Where any woman, wandering and begging, shall be delivered of a child, in any parish or place, to which she doth not belong, and thereby cometh chargeable to the same; the churchwardens or overseers may detain her, till they can safely convey her to a justice of the peace. And if such woman shall be detained and conveyed to a justice as aforesaid, the child of which she is delivered, if a bastard, shall not be settled in the place where so born, nor be sent thither by a vagrant pass; but the settlement of such woman shall be deemed the settlement of such child. *f. 25.*

Bastard born in
prison.

(6) A child born in the house of correction shall be sent to the place of its mother's settlement. 2 *Bulstr.* 358.

And in the case of *Elfing* and the county gaol of *Hersfordshire*, *H. 2 G.* A bastard was born in the county gaol: Resolved, that the settlement was with the mother. 1 *Seff. C.* 94.

Bastard born in
a lying-in hos-
pital.

(7) A bastard born in a lying-in hospital shall follow the mother's settlement. 13 G. 3. c. 82. [But as it may happen that the mother's settlement is not known, and there may be difficulties upon the parish where such hospital is situate, in removals and appeals concerning such settlement, it is enacted, that no such hospital shall be established without licence from the justices in sessions.]

Bastard born in
an incorporated
district.

(8) All bastard children born in the house of industry of any hundred, or other district, incorporated by act of
par-

parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled. 20 G. 3. c. 36.

(9) *T. 5 G. New Windsor and White Waltham.* The parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards, the woman swearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother? And by the court, There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent. *Sir.* 186.

Bastard born under a certificate

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the court held, that they were not afterwards to be admitted to dispute the validity of such marriage, but adjudged the children to be settled in the parish granting the certificate): Therefore in the case of *Hilton and Lidlinch*, *T. 15 G. 2.* the matter came under debate again; which was thus: A single woman went into the parish of *Lidlinch*, with a certificate from *Hilton*; lived there a year, and then had a bastard child. The sole question was, Whether the child should be settled in the parish where born, or in the parish giving the certificate? By the court: The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish, before she was delivered of the child; and wherever this court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is; for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands entirely on the 8 & 9 *W.* which, for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and

continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her family, and in another place, with his or her children, to the place from whence the certificate was brought. The question then is, Whether the bastard is included under the words *family* or *children*? And we take it he is not; for the law takes no notice of bastard children, they are *fili nullius, filii populi*, and are *prima facie* settled where born. *Nels. Bast. 2 Sess. C. 170. Str. 1168. Burr. Settl. Cas. 187.*

T. 19 & 20 G. 2. Wyke and Hipperholm cum Brighthouse. Two justices made an order for the removal of *John Catton*, otherwise *Speight*, being a bastard, from *Wyke* to *Hipperholm*, the place of his birth. Upon appeal, the sessions quashed that order. The case was: *Sarah Catton*, mother of the pauper, came on the 25th of *March* by certificate from *Shelfe* to *Hipperholm*, being then pregnant with a bastard child, namely, the said *John Catton*, otherwise *Speight*, the pauper; and was afterwards, in *April* following, delivered of him at *Hipperholm*. The sessions, being of opinion that the said *John Catton* the pauper, by reason of the said certificate, did not gain a settlement in *Hipperholm* where he was born a bastard as aforesaid, discharged the original order. The certificate itself was returned by the *certiorari*, which undertook that *Shelfe* should provide for her and her child, whenever they should become chargeable. It was moved to quash this order of sessions, upon this objection, that the justices at the sessions had mistaken the law; in support whereof was cited the case of *Helton and Lidlinch*. On a rule to shew cause, the counsel on the other side insisted, that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case is clearly distinguishable from that of *Helton and Lidlinch*. For here the woman is stated to be then pregnant with a bastard child, and the certificate expressly undertakes to provide for her and her child: so that *Shelfe* plainly had this very child in contemplation, no other child being named or hinted at. Unto which it was answered, That by the express resolution in the case of *Lidlinch*, a bastard of a certificate woman is settled where born; and fraud shall never be presumed, where it is not stated. The question therefore is, Whether the unborn bastard is to be considered as certificated? 'Tis true, a certificate is conclusive against the parish who gives it: But that is only in such points as are included in the certificate. This certificate, undertaking to provide for her and her child, must mean a child in being. If she had no other child,

child, they should have stated the matter specially.——
 L. Ch. J. *Lee* and Mr. J. *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. J. *Foster* observed (to which observation the other two justices agreed), that it did not at all appear, that the parish who gave the certificate *knew* that the woman was then with child. And he added, that there were many instances where women were near their time, without being known to be so. The counsel for *Hipperholm* proposed, that it should go back to the sessions to be more fully stated. But their opponents said, and the court agreed, that could not be done without consent. And the counsel for *Wyke* refusing to consent, the court were of opinion that the rule must be made absolute. And the order of sessions was quashed, and the original order affirmed, adjudging the settlement to be at *Hipperholm* where the pauper was born. *Bur. Sett. Cas.* 264.

M. 10 G. 3. Ipsley and Studley. *Anne Gausier* came into the parish of *Ipsley*, with a certificate from *Studley* in the words following: "To the churchwardens and overseers of the poor of the parish of *Ipsley*; We the churchwardens and overseers of the poor of the parish of *Studley* do hereby certify, own, and acknowledge *Anne Gausier* spinster, and the child or children that she now goeth with, to be our inhabitants legally settled with us in our said parish of *Studley*: And if at any time hereafter the said *Anne Gausier*, or her child or children which she now goeth with, shall become chargeable to and ask relief of your said parish of *Ipsley*, we the said churchwardens and overseers of the poor of our said parish of *Studley* do hereby promise for ourselves and successors, that we will, when requested by any of you, receive, relieve, and provide for them, as our inhabitants, according as the law in that case requires." The child was born at *Ipsley*, within about a month after she came to reside there under the certificate. It was argued, that the certificate in this case could not operate as to the unborn child, but that the child was notwithstanding settled in the place where it was born: That this is not a certificate within the act of 8 & 9 *W. c.* 30. The undertaking relates to a non-entity, an embryo. An unborn child cannot be personally certificated. It is no part of the parent's family. And the act obliges only the certifying parish to provide for the pauper mentioned in the certificate, together with *his or her family*; and a bastard, in the sense of the act, is part of no person's family.——But the court were clearly of opinion, that the parish of *Studley* was

bound by this certificate, which takes notice of the woman's being then unmarried and with child; and acknowledges the child she then went with to be legally settled with them in their parish. And *L. Mansfield* observed, that the woman was very big with child; and was understood by both parishes to be so. And *Studley* expressly promised to provide for the infant she then went with. Therefore they ought to be bound by their certificate. An infant *in ventre sa mere* may be, to a variety of purposes, considered as born. *Bur. Sett. Cas.* 650.

Bastard not to be removed whilst a nurse child.

(10) Hitherto concerning the settlement of a bastard child: But notwithstanding the child's settlement, yet nevertheless if the mother and the child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, as a necessary appendage of the mother, and inseparable from her. As in the case of *Skeffrath* and *Waisford*, *M.* 3 G. 2. The order was to remove a woman to her settlement; and her bastard child, of two years of age, to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the court for that reason. *2 Sess. C.* 90.

Except when deserted by the mother.

But altho' the child may not be separated from the mother, yet if she voluntarily desert it, it seemeth that the cause of nurture then ceaseth, and that then it may be sent to its place of settlement.

How to be maintained whilst a nurse child.

Whilst the child continues with its mother as a nurse child, and during that time not removeable to its place of settlement, yet the parish where the child's proper settlement is shall maintain such child in that other parish. As in the case of *Darlington* and *Hemlington*, *H.* 17 G. 3. *Eleanor Guy* went with a certificate from the township of *Hemlington* to the township of *Darlington*, in which last township she had two bastard children, and there became chargeable. An order being thereupon made for the removal of her to *Hemlington*, she took the two children who were born in *Darlington* with her, being both under the age of seven years. Two justices made an order upon the township of *Darlington* for the maintenance of the two children born in that township. *Darlington* appealed against the order of maintenance, and the sessions being of opinion

opinion that *Darlington* was not liable, quashed the said order: But the proceedings being removed into the court of king's bench, the court were of opinion that *Darlington* was obliged to maintain the two children at *Hemlington*, whilst residing there with their mother as nurse children, and therefore quashed the order of sessions, and affirmed the order of the two justices. *Douglas*, 9. *Cal. Cas.* 6.

(11) *E. 8 G 2. St. Peter's and Old Swinford.* Two justices remove *Joseph* the son of *Joseph Haighington* from *St. Peter's* to *Old Swinford*, as a bastard born there on the body of *Hannah Aske*. On appeal, the sessions quash the order, and state the case specially: That *Joseph Haighington*, the father, gave evidence in court, that for seven years together, he travelled with the said *Hannah Aske* as wandering persons from place to place, till the death of the said *Hannah Aske*, which was about 15 weeks since; and that during all that time they cohabited and lay together as man and wife; and it did not appear, that the marriage was ever questioned in the lifetime of the said *Hannah*: That during the time that he and the said *Hannah* did so cohabit as man and wife, she was delivered of three children; that the said *Joseph*, one of them, who was the person removed by the said order, was born in the said parish of *Old Swinford*: That the said *Joseph* and the other two children were reputed as his children, and baptized as the legitimate children of him and the said *Hannah*: That he and the said *Hannah Aske* were never married. And it appearing to the sessions, upon the evidence of the said *Joseph Haighington*, that the said *Joseph* the infant was born during the time that the said *Joseph* and *Hannah* did cohabit and lie together and were reputed as husband and wife, and there being no other evidence, they were of opinion that the evidence of the said *Joseph Haighington* could not support the order, so as to bastardize the said *Joseph* the infant removed. And in support of the order of sessions it was observed, that this man could not be a proper witness in the case; for nobody can be adjudged a bastard without the evidence of the woman. But by *L. Hardwicke Ch. J.* There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. And what is there to make him an incompetent witness? It was an objection to an order of bastardy two terms ago, *K. v. Willey*, that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband. But this man doth not swear to discharge himself: For whether he be the legitimate,

Evidence of
bastardy after
the mother's
death.

mate, or only the natural father of the child, he is equally bound to maintain it. *Burr. Sett. Caf. 25.*

2. Settlement by birth of legitimate children.

How far legitimate children shall be settled where born.

In the case of *Rickmansworth* and *St. Giles's*. A child was ordered [to be removed from the parish of *Rickmansworth* to the parish of *St. Giles's*, as being the place of his birth, the place of his father's last legal settlement being not known: For where the father's place of last legal settlement of a legitimate child is not known, there the child may be sent to the place of its birth, as well as an illegitimate one. *Blackerby, 246.*

H. 8 An. Cripplegate and *St. Saviour's*. A child of three years of age was removed from one of these parishes to the other, and it appeared in the order, that they removed him there, because he was born there, not having any other settlement. By the court: The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *prima facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only *quomque* they find the father's settlement; and if they never can find that, it is absolute upon them. *Felty, 265.*

But here it is to be observed, that in the two cases above mentioned, the point was not in question, whether or no if the father had no settlement, yet if the mother had a settlement, such children should follow the mother's settlement, or should be sent to the place of their birth? And there will appear good opinions in the next course of settlements, that if the father hath no settlement as being a foreigner, or if the father's settlement is not known, yet if the mother hath a settlement, the children in such case shall not be sent to the place of their birth, but to the place of their mother's settlement: But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it, until another settlement be found out.

By the 13 G. 2. c. 29. for confirming and enlarging the powers given by charter to the governors and guardians of the hospital for the maintenance and education of exposed

Foundlings maintained in hospitals.

posed and deserted young children, it is provided, that no child, nurse, or servant, received or employed in such hospital, shall by virtue thereof gain any settlement in the parish where such hospital shall be situate; and consequently the settlement of *foundlings* is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement; if neither of these is known, or if they are bastards, they shall be settled where they were born; if that cannot be known, which is properly the case of a *foundling*, this seemeth to fall under the general rule, that every person shall be maintained and provided for in the place where he happens to be, until a settlement can be found; for in a christian civilized country, no person ought to be suffered to perish merely for want of necessaries. Only, in the present case, the act takes such children off the parish, and leaves them to the provision of the hospital.

iv. Of the settlement of children with their parents.

The birth of legitimate children doth not give them a settlement, except where the settlement of their father and mother is not known, and then only till it is known. *Foley*, 269.

Settlement of a legitimate child with the parents.

Formerly it was held, that a child shall continue with its parents as a nurse child, until it shall be eight years of age, during which time it shall not be deemed capable of gaining a settlement in its own right; but by the latter resolutions it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be seven years of age; and that after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of its own. But it seemeth not difficult to determine with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parents settlement. For by the 5 *El. c. 5. s. 12.* a child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *G. 2.* a vagrant's child of that age may by the justices be put out an apprentice: And as soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a

At what age a child may gain a settlement distinct from the parents.

set-

How far child
born shall fol-
low the father's
settlement.

settlement. So that the precise time, when a person may have gained a settlement in his own right, is at the age of seven years and forty days.

E. 10 An. 2. and St. Giles's. Order to remove an infant to the parish of *St. Giles's*; because it appeared, that though the father was settled at another place, yet the child was born at *St. Giles's*. Quashed by the court; for that the place of the settlement of the child is with the father, and not the place where the child was born. *1 Sess. C. 18.*

H. 10 G. St. Giles's Reading and Everfly Blackwater. It was ruled by all the court upon argument, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement, without ever having been there before. *2 Sess. C. 112. Str. 580. L. Raym. 1332.*

M. 12 G. 2. Sowton and Sydbury. The question was, whether the children, being above the age of nurture, shall be removed with the father to the father's settlement, where the child had never inhabited? By *Lee Ch. J.* In the case of *Everfly Blackwater*, the court were of opinion, that a child might be sent to the settlement of his father, though it had never been there before, contrary to an opinion of *L. Parker* in a former case. And he said the true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement. *2 Sess. C. 150. Andr. 345.*

T. 2 An. Comner and Milton. A man settled at *Comner*, and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Comner* were by an order of two justices sent to *Comner*, viz. those that were under seven years old; the justices apprehending, that the place of their birth was the place of their lawful settlement. And this order being removed into the king's bench by certiorari, it was insisted to maintain the order, that the children had gained a settlement in *Comner* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton*; for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children. But by *Holt Ch. J.* The place where a bastard is born, is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born, is not

not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.* and before he gains any settlement there, has a son born in the parish of *B.* and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father, that makes the settlement of his child; and if the father hath gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family. 2 *Salk.* 528. 3 *Salk.* 259.

E. 26 G. 3. Bucklebury and Bradfield. Two justices removed *Elizabeth Knott*, aged about five years; *John Knott*, aged about two years and a half; and *Sarah Knott*, aged about one year and a half; from *Bucklebury* to *Bradfield*: And in the order of removal was set forth, the names and ages of the paupers, and that they were come to inhabit, &c. and that upon due proof made thereof, as well upon the examination of *Elizabeth Knott* their grandmother, upon oath, as otherwise (and so on in the usual form). The sessions on appeal quashed the order upon the merits, and stated the following case. That the paternal grandfather of the pauper's was, at the time of his death, settled in *Bradfield*, and that he left several children by his wife *Eliz. Knott*, and amongst others *Charles Knott*, who went to *Twickenham* in 1777, where he married *Sarah Slade*, who dying about Christmas 1784, *Charles* brought the paupers to *Elizabeth* his mother, who was living at *Bucklebury*, in 1785, and told her they were his children, and desired her to take care of them, and he would send money for their maintenance; the paupers remained with *Elizabeth* about 14 weeks, but she not receiving any money from her son, and being unable to maintain them, they were removed to *Bradfield*, who appealed to the next sessions, and *Charles Knott* was subpoenaed but did not appear, and the appeal was adjourned, and it was recommended to the parties to endeavour at their joint expence to find *Charles Knott*; but at the next sessions he not appearing, the appeal was then heard, but was further adjourned to the next sessions, when the appeal was again heard, and the removants proceeded (according to the practice of the sessions) to support the order by the following evidence; (viz.) That *David Knott*, the paternal grandfather, had his settlement at his death in *Bradfield*, and that his son *Charles* was born there: They produced

Removing nurse children to the settlement of their parents.

the

the register of the marriage of *Charles Knott*, with *Sarah Slade*, and also the baptisms of the paupers. It did not appear whether *Charles* had gained any settlement subsequent to his derivative settlement, nor was any evidence given to identify the paupers to be the children of *Charles* and *Sarah Knott*, except as above. *Wilson* in support of the order of sessions, contended, that the order was informal on the face of it; that the paupers, being nurse children, ought not to have been removed without their father or mother, unless the order had stated they were dead, otherwise the children might be settled in a different parish from their parents. Another objection was, that the order was grounded on the examination of the grandmother and not on that of the father. And there was no evidence produced at the sessions but the grandmother to identify those children, or that the father had not gained a subsequent settlement.—The other side was stopped by the court, who were clearly of opinion, that there was no objection to the competency of this evidence; and as to the other point, that it was incumbent on the parish of *Bradfield* to have shewn that the father had gained a subsequent settlement. Order of sessions quashed, and the original order confirmed. *Cas. by Durnf. and East, 1 V. 164.*

Child emanci-
pated from the
father.

T. 7 G. Eastwoodhay and Westwoodhay. Upon appeal from an order of two justices, for the removal of *Robert Baker*, from the parish of *Westwoodhay*, to the parish of *Eastwoodhay*, the sessions state the fact specially for the opinion of the court: That forty years since, *Thomas Baker*, the father of this *Robert*, was seised in fee of a freehold estate in the parish of *Hamstead Marshal*, where he lived till the year 1697, and had this son *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Chevely*, where he rented a tenement of 20l. a year, for two years: That in 1699, he purchased a copyhold estate of 11l. a year in the parish of *Westwoodhay*, whither he removed with his son and servants, and served churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: That in 1716, he purchased a cottage of 1l. 12s. 6d. a year in *Eastwoodhay*, and went and lived upon it till his death: but *Robert* the son staid behind in *Westwoodhay*, where he married a wife, and has worked ever since on his own account, and that he is 30 years old. Upon the whole; the sessions confirmed the order of the two justices for his settlement at *Eastwoodhay*. It was moved to quash the order of sessions, for that the settlement of *Robert* the son is either at *Hamstead Marshal*, where he was born, and where he lived till
eight

eight years old; or if it should be carried so far, as that he gained a new settlement with the father, by removing with him as part of his family, according to the case of *Comner and Milton*, yet that can carry him no farther than *Westwoodhay*, which is the last place to which he accompanied his father; but let the settlement be in either, it is not material now; the only question being, whether here is any settlement in *Eastwoodhay*, for which there is no colour? On the other hand, it was insisted, that let the son be of what age he will, he shall follow the settlement of the father, till he gains one by his own acquisition; and it appearing he had never done any thing to gain a settlement by act of his own, either in *Hamstead Marshal*, *Chevely*, or *Westwoodhay*, then he must follow the settlement of the father as well in *Eastwoodhay* as in any of the rest. *Pratt Ch. J.* The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodhay*? If he had gone thither with his father, as part of the family; possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in *Eastwoodhay*. I think his settlement is in *Westwoodhay*, which was the last place where he lived as part of his father's family. To which the rest of the court agreed: And the order was quashed. *Str.* 438.

E. 2 G. 2. St. Michael's C-ssany in Norwich, and *St. Matthew's in Ipswich*. Two justices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the said *Edmund* the father, from the parish of *St. Michael* in *Norwich*, to the parish of *St. Matthew* in *Ipswich*. Upon an appeal from this order, the sessions stated the matter specially, viz. That *Edmund Williams* the grandfather was settled at *Shipton Mallet* in *Somersetshire*; and afterwards removed to *Bruton* in the said county, and had a writing given him from *Shipton Mallet*, acknowledging his legal settlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the son was born; and that he continued there with his father till he was nineteen years of age, and was bred up to his father's business of a woolcomber. Then *Edmund* the son left his father, and came to *Norwich*, and there he married two wives; by the first he had *Edmund* the grandson; and ten years after his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; since whose birth, about two years ago, *Edmund Williams* the grandfather gained a new settlement at *St. Matthew's Ipswich*: But
Edmund

Edmund the son hath never lived with his father at *Ipswich*, or any where else, since he lived with him at *Bruton*. The question was, whether the persons removed, to wit, *Edmund* the second, his wife, and three children, should follow the settlement of the grandfather at *Ipswich*; or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time? Mr. J. Reynolds; I do not see how the father can gain a settlement for the son so many years after the son has left him. L. Ch. J. Raymond; I think it is odd, that an old man of sixty, who has left his father for 40 years, shall follow the settlement of his father, as oft as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents because of nurture. And by the whole court: The reason why we enquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act; but it is almost a contradiction in terms to say, that a man who has left his father 40 years, shall follow the settlement of his father. 2 Sess. C. 129. Str. 831.

H. 21 G. 2. *Bugden and Amptbill*. *John Green*, father of *Thomas Green* the pauper, came by certificate from *Royston* to *Amptbill*. They remained together at *Amptbill*, under the certificate, till *Thomas* the pauper came of age. Then *Thomas* the pauper, being upwards of 21 years of age, married in *Amptbill*, and left his father, and lived there with his wife and children distinct from his father, till removed by the present order. Three years after the marriage of *Thomas*, *John* the father removed from *Amptbill* to *Bugden*, and there gained a settlement: But *Thomas* the pauper never lived there. It was argued that here was a good settlement of the pauper at *Bugden*, for that the last settlement of the father would be the legal settlement of the son, unless the son had gained a new settlement of his own. On the other hand, it was insisted, that as the son did not live with his father at *Bugden*, he could not gain any settlement there, being no part of his family; and the rather, because he had an independent and distinct family of his own at another place. And of that opinion was the court; who held, that the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father. *Burr. Settl. Cas.* 270.

E. 9 G. 3. *Walpole St. Peter's* and *Wisbech St. Peter's*. The pauper, being settled at *Outwell* as part of his father's family, listed himself for a soldier, and continued in

the service four years. After his discharge, he came home to his father, who had removed from *Outwell*, and then lived at *Walpole*, and rented and occupied a farm there of about 50l. a year, and continued with his father there about 12 or 14 weeks; and afterwards worked at different places as a labourer, till he was removed by order of two justices from *Wibsch* to *Walpole* aforesaid. The sessions, upon appeal, confirm the order. It was moved to quash both these orders, for that the pauper's legal settlement was at *Outwell*; which was the place of his father's settlement at the time of the pauper's leaving his father's family, and consequently the pauper's own derivative settlement. The son, by listing himself for a soldier, and continuing four years in the service, became emancipated from his father's family; and not having gained any subsequent settlement for himself, must resort to his old derivative settlement at *Outwell*; and could not, after such an emancipation from his father's family, gain a settlement at *Walpole St. Peter's*, where his father had newly and subsequently gained a settlement, but had none there when the son left him and ceased to be part of his family. And a rule was made to shew cause. Which rule, upon affidavit of service, was made absolute, without defence. And both the orders were quashed. *Burr. Sett. Cas.* 638. *Black. Rep.* 669.

H. 15 G. 3. Halifax and Warley. Case specially stated. *John Bragg* the father of the pauper, went with a certificate from *Skircoat* to *Halifax*, where the pauper was born. And when he (the pauper) was about fifteen years of age, he bound himself an apprentice by indenture to *William Smith* of *Halifax* stuff weaver, for the term of four years, and served his master there for that time. After he was out of his apprenticeship, and when he was about 19 years of age, his father took a farm of 12l. a year in *Warley*, and went and resided there several years: That his son, the pauper, always after the father went to *Warley*, worked about the country as a stuff weaver, but came to his father at *Warley* when he pleased, and kept his holiday cloaths there, and considered his father's house as his own home: That when he came to his father's house, he paid for what he had, and was his own master, to go and work for himself whenever he pleased.—*L. Mansfield* was not in court. The other three judges thought that the son could not be considered as emancipated, or independent of, or separated from his father. He went to his house when he pleased, and hid his cloaths there. *Mr. J. Aston* said, that where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement

where his father goes to reside : But if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles. The distinction was well laid down, he said, in the *Fugden* case ; and he observed, that in the above case of *Walpole St. Peter's*, the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it. *Bur. Sit. Cas.* 806.

E. 23 G. 3. K. v. Tottington Lower End. Edward Holt and his wife and family were removed from *Broughton to Tottington Lower End* both in *Lancashire*. The sessions confirmed the order and stated the following case : That the pauper is the son of *Thomas Holt*, who at the time of the pauper's birth was settled in *Tottington Lower End*. When he was 7 years old his mother died, and he and his father went to live with his uncle *Edward Holt* in the township of *Pilkington* in the same county ; his father boarded him, but his uncle, out of charity to his father who had 4 other young children, and to keep him off the town, *took the pauper* and provided for him meat, drink, lodging, and cloaths ; in about 18 months his father went to reside in *Ratcliffe* an adjoining township, but the pauper continued with his uncle till he was ten years old, about which time his uncle's wife beat him (his uncle being from home), and *he went to his father's house* and stayed there about a fortnight ; but his father not having a loom to accommodate him as a weaver, *desired him to return* to his uncle, which he did, and his uncle taught him to weave in the day, and sent him to school in the evenings ; his uncle provided him with meat and cloathing, and received the money he earned ; he stayed with his uncle on these terms until he was 16 years old, but from his first going to his uncle to that time, he now and then went to see his father at a holiday time or so, and some time stayed all night. When he was 14 years old, his father came into *Pilkington*, and gained a new settlement there by renting 15l. a year. The pauper considered his father's house as his proper home, because he was his father ; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper whenever the uncle turned him away ; and when he was 16 years of age, having been struck by his uncle, *he told him he would leave him and return home to his father*, his uncle said he might ; upon which *he went* to his father and told him the circumstances. The father said he was liable to take him in, and *did receive him as part of his family* ; he stayed with his father about a week, and helped him to get his hay ; and when that

that was done, his father not having a loom desired him to return to his uncle, and see if he would take him in. He did return, and agreed with his uncle to work for himself and pay for his board; and it did not appear to the sessions he ever returned to his father. Some time after his last return to his uncle, having taken 2s. 6d. or more of him, his father gave his uncle 2s. 6d. as amends for the same. The pauper has done no act to gain a settlement in his own right. The father says if the uncle had gone to live at a great distance from him, he would not have suffered the pauper to have gone with him — *L. Mansfield*. The pauper considered himself as part of his father's family, and the father considered him in the same light. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not part of his father's family. The uncle was under no obligation to do any thing for him, or to keep him an hour; and the boy in point of fact on every disengagement went to his father's house as his home, and he received him, as he was bound to do. I see no ground to consider this as an emancipation. Both orders quashed. *Cald. Cos.* 284.

H. 29 G. 3. K. v. Offchurch. Henry West and Martha his wife were removed from Thurlaston to Offchurch both in *Warwickshire*. The sessions confirmed the order, subject to the opinion of the court, on a case reserved. The case stated (amongst other things), That the pauper was born in Offchurch in 1765, and resided there with his father until 1770. On his father's leaving Offchurch, the pauper was left with one Leeson at Offchurch to be taken care of, his father paying for his lodging and board. The pauper continued at Leeson's at Offchurch for two years, and then went to reside with his uncle Haddon, who also lived at Offchurch, and continued to reside with him about two years, during which his uncle provided him with board, cloaths, lodging, and pocket money, and he worked with his uncle but received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at Ladbroke, and stayed there a week, and then went to reside with another uncle, one Salmon of Weston, with whom he lived six years as he had done at his uncle Haddon's. His uncle Salmon provided him with board, cloaths, lodging, and pocket money, he working for Salmon without having been hired as a servant, or receiving any wages. On leaving his uncle Salmon he went and lived 3 weeks with his father at Ladbroke, where his father had obtained a settlement. The pauper has never done any act to gain a settlement. — *Erf-*

kine and *Romilly* argued, that the son was emancipated when the father gained a settlement at *Ladbroke*; that he never lived with his father during his residence there, except for three weeks, when he came as a visitor, and not as a part of his father's family.—*Bearcroft* and *Willis contra* were stopped by the court.—*L. Kenyon* Ch. J. This is the weakest case of emancipation that was ever attempted to be made out. When the father left the parish of *Offchurch*, the son was only 5 years old; now it cannot be pretended at that time he was emancipated, and yet he then ceased to reside in his father's family. It is also stated, that about two years afterwards, when he was about seven or eight years old, and past the age of a nurse child, he went to live with his uncle *Haddon*. Then was he emancipated at that time? Ordinarily speaking, one of these things must happen before the son can be said to be emancipated: either he must have obtained a settlement for himself, or have become the head of a family, or at most he must have arrived at that age when he may set up in the world for himself. But here the son does not fall within either of those descriptions: no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle *Haddon*, he was only eight years old at the most; and he could gain no settlement either by living with that uncle, or his other uncle *Salmon* as a servant, because the case states that he was not hired as a servant by either of them. Now during all this time the father had a right to the custody of the son, and might have obtained him by *habere corpus*, for the parental care was not then done away. It is not necessary in these cases of derivative settlements that the child should remove with the father from place to place, for the settlement of the father will be communicated to the child: otherwise children who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement; and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement. How long the power of communicating a derivative settlement may continue, it is not necessary to determine, for in this case it certainly remained longer than till the child was 9 or 10 years old, and that is sufficient for the determination of this question. The other judges assenting. Both orders quashed. *Dunf.* and *East.* 3 V. 214.

T. 29 G. 3. K. v. Edgeworth. *Henry Rothwell* and his wife and family were removed from *Castleton* to *Edgeworth* both in *Lancashire*. The sessions confirmed the order and stated the following case: That *Henry Rothwell* father of *Henry* the pauper, when the pauper was about 13 or 14 years old, came to live upon a tenement at *Edgeworth* of 5 l. a year, but had no settlement there, and resided there about two years; during which time he put out the pauper to one *James Pollit* who then resided in *Spottland*, for 4 years, to learn the trade of a wool-comber. The pauper accordingly left his father's house, to which he never afterwards returned but as a guest, and resided with and worked for *Pollit* at *Spottland* for 4 years; and by him was provided all that time with meat, drink, washing, lodging, and cloaths, and was considered by his mother as part of *Pollit's* family. During those 4 years the pauper was sometimes a quarter or half a year without seeing his father or mother, but sometimes came to his father's house on a *Saturday* evening, and returned home to his master's either on the *Sunday* evening, or *Monday* morning following. After the expiration of the 4 years he never returned to his father's family, but worked at his trade of a wool-comber at different places about the country, and supported himself thereby until he married, and resided with his wife and family in a house of his own. After the pauper was put out to *Pollit* and before the 4 years expired, *Henry* the father took another tenement in *Edgeworth* of the yearly value of 8 l. which he occupied with the former tenement for a year, whereby he gained a settlement at *Edgeworth*. The pauper never gained any settlement for himself; and the question is, whether he followed his father's settlement at *Edgeworth*? This case was sent down to be re-stated, whether the pauper had been apprenticed to *Pollit* by indenture. The sessions returned that the pauper had been put out apprentice by indenture, which was void for want of the stamp, denoting the payment of the additional duty.

—The court thought this case governed by the preceding case, and (without argument) discharged the rule for quashing the order of sessions. *Durnf. & East*, 3 V. 354.

T. 29 G. 3. K. v. Witton cum Twambrookes. *George Hewitt* and his wife and family were removed from *Stockport* to *Witton cum Twambrookes*. The sessions confirmed the order and stated the following case: That the pauper's father, *John Hewitt*, rented a tenement of 16 l. a year in *Witton*, &c. and resided upon it above a year, when the pauper was about six years old. The father then went to *Middlewich*, where he did not act to gain a settlement; and

Door. (Settlement with the parents.)

about 2 years after ran away from his family; and the pauper's mother, taking the pauper with her to *Congleton*, died in half a year; then the pauper was left in the care of one *Jane Brookes*, with whom he lived at *Congleton*, and worked at the silk mills there. And the overseers of *Witton*, &c. paid the whole or a part of his maintenance for 4 years to *Jane Brookes*, after which the pauper supported himself till the age of 16, at which time he got 3s. 9d. per week, and boarded himself where he liked. During the first part of the time he lived at *Congleton*, he saw his father twice at the distance of about 4 years, at which time his father did not give him any thing (except a pair of breeches, and 2½d. the first, and 1½d. in money the second time). At 18 or 19 years of age, the pauper went from *Congleton* to *Shiffild*, and hired himself for four years, but gained no settlement thereby. He heard that his father had been to enquire after him at *Congleton*, and that he then lived at *Dunham*, to which place he went to see him, and was at that time 23 years of age, and married. It appeared that the father had made the above enquiry of his daughter, the pauper's sister, with intent, as he said, to give him a suit of cloaths, as he had done less for him than any of his other children. It appeared that the father had married a second wife, and held a tenement in *Dunham* of 11l. a year, and had lived upon it 8 years when his son went to see him there as above, upon which visit he stayed only one hour, and never saw his father at any time but as above.—*Bearcroft* and *Manley* in support of the order of sessions attempted to shew that the pauper was emancipated; because, after the age of 8 years his father had no *domicile* of which the pauper could be a member.—But *L. Kenyon* Ch. J. said, it was never conceived in any case, that a son who was only 16 years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being 21, or married, or having gained a settlement in his own right, or (as in the case of the soldier) having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family. By the court, rule absolute. *Durnf. & East*, 3 V. 355.

Father dead.

H. 10 G. St. Giles's and Everfly Blackwater. Though the place of the birth of a child, where the father hath no settlement, is the place of the settlement of the child; yet where the father hath gained a settlement, his children, though born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall

shall be removed thither, as well after the death of their father, if occasion requires, as in his lifetime, supposing they have gained no settlement of their own. *L. Raym.* 1332. *Str.* 580.

T. 8 W. K. and Luckington. Howell and his wife were settled at *Luckington*, and came to *St. Austin's*, and there a child was born. The father dies in the king's service. The question was, who shall keep the child? It was objected, that it was settled where born; for that they could not send it to the father when he was dead. But by *Holt Ch. J.* The death of the father doth not alter the child's settlement. *Comb.* 380.

So if the father dies before the child is born; yet the child shall be settled where the father was settled before his death. *M. 5 An. 2.* and *Clifton.* 17 *Viner*, 382.

M. 1 G. St. George's and St. Katharine's. A man settled in *St. Katharine's*, married, and had six children born there, and died. After his death, the widow goes into the parish of *St. George*, with her six children, and rents a house of 12 l. a year, and lives in it with her children four months. The single question was, whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St. George*? And the whole court were of opinion, that the six children were settled in the parish of *St. George*, where the mother's last settlement was. And by *Parker Chief Justice*, There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with the mother. The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage, is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her. *Foley*, 254. 1 *Sess. C.* 69.

Father dead and the mother a widow.

H. 13 G. Woodend and Paulspury. John Buncher was settled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Paulspury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, Whether the daughter gained a settlement at *Paulspury*? And

it was adjudged that she did ; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement, and a mother's, in such case as this ; for the mother is obliged to provide for her children after her husband's death, as the father was when living ; and she could not leave this daughter behind her, neither could she be removed from her. *L. Raym. 1473. Fol. 256. Str. 746.*

T. 8 & 9 G. 2. Barton Turfe and Happisburgh. *Thomas Man* hired a farm of the yearly value of 100*l.* in *Barton Turfe*, which he occupied for about three years, and died there. After his death his widow removed from *Barton Turfe* to *Happisburgh*, and dwelt in a house and occupied lands there, of the yearly value of 4*l.* which were given to her by the will of her father. And *Deborah* her daughter, being then of the age of 13 years, went and lived with her mother as part of her family, for about a year and a half. By the court : The daughter gained a new settlement in *Happisburgh*, by living with her mother there, as part of her family, upon the mother's own estate. For a child may gain a settlement under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had. *Burr. Settl. Cases, 49.*

And the like was held by the court in the case of *Oulton and Wells, M. 9 G. 2. Id. 64.*

Father dead and
the mother mar-
ried again.

M. 10 W. Wangford and Brandon Three poor men of *Wangford* came into the parish of *Brandon*, and there married three poor widows of *Brandon*, who received relief from the said parish ; each of which widows had children by their former husbands, some under seven, some above seven years of age. It was holden, that the children did not gain a settlement in *Wangford*, nor were removable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for nurture only : Yet still the parish of *Brandon* must relieve them there, and not the parish of *Wangford*. But the children above the age of seven years ought not to be removed at all ; being settled inhabitants in the parish of *Brandon*. And the removal of the mother shall have no influence on the settlement of their children. *Carth. 449. 2 Salk. 481. Burr. Settl. Cas. 3.*

In the aforesaid case of *Comner and Milton, T. 2 An* It was said, that if after death of the father, the mother marries again to a husband who is settled in another parish ;
her

her children, such of them as are above seven years old, shall not be removed; those under shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was settled; and to that parish they may be sent after seven years old, as to the place of their lawful settlement; for this accidental settlement of their mother, which was only by the marriage with a second husband, and as she is now become one person with him, shall not gain a settlement for her children.

And in the case of *Woodend and Paulspury* aforesaid, *H. 13 G.* It was said, that if after the husband's death the wife shall marry again to a man settled in another parish; her children by her former husband must go with her for nurture, yet they are no part of her second husband's family, and therefore gain no settlement thereby in the parish where the father in law is settled. *L. Raym. 1473.*

T. 6 & 7 G. 2. St. Giles's in the Fields and St. Clement's. *Jacob Maile*, the pauper, was an infant of nine years of age. His father's settlement was not known: His mother's settlement before their marriage was known: His father died: His mother married a second husband, who had a settlement; and she, consequently, gained a new settlement by this second marriage. By the court: *Jacob Maile's* settlement is where his mother was last settled before her marriage with *Jacob's* father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband. And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is. *Burr. Sett. Cases, 2.*

E. 8 G. 2. K. and St. Mary Berkhamsstead. The father ran away, and the mother went and resided on an estate devised to her: One question was, whether the children could gain a settlement, by residing with the mother on such estate, where the father had never lived? And it was held by Lord *Hardwicke* Ch. J. That as it did not appear that the father was dead, the court must suppose him to be living; and in such case, the children could gain no settlement but what was derived from their father: But the matter was afterwards referred to the judges of assize. *2 Sess. C. 182.*

H. 12 G. Westram and Chidingstone. An Englishman whose settlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court, the mother and children ought to be settled where the mother was settled before marriage. *Foley, 252.*

Father ran away, whether the child can gain a settlement with the mother.

Father having no settlement, whether the child shall be settled with the mother.

Poor. (Settlement with the parents.)

M. 3 G. 2. St. Giles's and St. Margaret's. *Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St. Margaret's* to *St. Giles's* as being the place of *Sarah's* last legal settlement before her marriage, she having married an *Irishman* who had no settlement. And it was adjudged, that *Dorothy* her daughter shall be settled with her mother in the parish of *St. Giles's*, where her said mother's settlement was before marriage. *F.L. 251.*

T. 9 G. K. and St. Paul's Shadwell. Resolved by *Eyre* and *Fortescue*, that where the father being a foreigner had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth. *2 Sess. C. 113.*

H. 10 G. St. Giles's and Everfry Blackwater. It was held by the court, that where the father's settlement cannot be found, yet if the mother's can, the child shall have the benefit of that. *2 Sess. C. 112.*

H. 23 G. 2. St. Botolph's without Bishopsgate and St. John's Wapping. A child of an *Irishman* having no settlement in *England*, and supposed to be on board a man of war, in the *West Indies*, and of his wife being an *Englishwoman*, was adjudged to go with the mother to the mother's settlement which she had before marriage. *Burr. Sett. Caf. 367.*

M. 33 G. 2. St. Matthew's Bethnal Green and St. Katherine's. A man, whose settlement was not known, married a woman who was settled in the precinct of *St. Katherine's*. They had a son born in *Bethnal Green*; which son married a woman settled in the parish of *St. Leonard Shoreditch*; and had several children by her. It was argued that these children ought to follow the acquired settlement of their mother; and not their father's, which was only a derivative one from their grandmother, who had married a *Frenchman* that had no settlement. But not allowed by the court; who said, that there is no difference between an acquired and a derivative settlement. And the rule laid down was this; That the child's settlement follows that of its father, if the father's can be found; and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. And these children were adjudged to be settled at *St. Katherine's*. *Burr. Sett. Caf. 482.*

Father and mother both dead, and the child's settlement not known.

A travelling woman, having a small sucking child upon her, was apprehended for felony, and sent to the gaol, and was hanged: This child is to be sent to the place of its birth, if it can be known; otherwise it must be sent to the

the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. *Read. Poor. Dalt.* 168.

And where a child is first known to be, that parish must provide for it, till they find another: *By Hist Ch. J. Comb.* 364. 372.

v. Of settlement by apprenticeship.

The statutes relating to the settlement of apprentices, are these following; which I will first exhibit together at one view, and then set forth the judgment of the court of king's bench upon the several parts thereof.

By the 13 & 14 C. 2. c. 12. *On complaint by the churchwardens or overseers of the poor, within 40 days after any person shall come to settle in any parish, on any tenement under 10 l. a year; two justices (1 C.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.* By the 1 J. 2. c. 17. *The said 40 days shall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing.* And by the 3 W. c. 11. *Not from the time of delivering such notice, but from the time of the publication of such notice in the church.*

Statutes concerning the settlement of apprentices.

But by the said act of the 3 W. *If any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published.* s. 8.

By the 12 An. st. 1. c. 18. *If any person after June 24, 1713, shall be an apprentice bound by indenture to any person residing under a certificate, in any parish, township, or place; and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, township, or place, as if he had not been bound apprentice.* s. 2.

And by the 9 & 10 W. c. 11. *No person who shall come into any parish by a certificate, shall be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall bona fide take a tenement of 10 l. a year, or execute an annual office in such parish.* (And consequently not by apprenticeship.)

And by the 8 An. c. 9. and 9 An. c. 21. *The master shall pay duty of 6d. a pound, for 50 l. or under, and of 12d. a pound for every pound above, of money, or of things not money according*

according to their value, given with apprentices, and proportionably for greater or lesser sums: Except money given with parish apprentices, or out of public charities. The sum given, to be written in the indenture in words at length. And besides the stamps before requisite, the indentures to be moreover stamped with another stamp, denoting the 6 d. or 12 d. a pound respectively. And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped within the time limited; such indentures shall be void, and not available in any court or place, or to any purpose whatsoever.

And by the 31 G. 2. c. 11. *No person who shall have been bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the place where he was so bound and resident 40 days, by any order of removal, or order of sessions, by reason only of such writing not being indented.*

General exposition
of the sta-
tutes.

The statute of the 13 & 14 G. 2. gives power to remove persons within the space of 40 days after they come to reside, but no power to remove them after the said 40 days; and consequently where the overseers have neglected to remove them for 40 days, they become afterwards *unremoveable*. The statutes of J. 2. and W. 3. do restrain such 40 days residence to be after notice in writing; but the latter clause of the statute of W. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose, for that the justices cannot upon the complaint of the overseers remove the apprentice from his master, that is to say, they cannot upon complaint of the overseers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his master, and the master is bound to keep him; for this can only be done upon the complaint of the master or apprentice: and continuing 40 days unremoveable without notice, is the same thing as continuing 40 days removeable, but not removed, after notice; and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of 40 days in the term of his apprenticeship; and where he serves the last 40 days, there is his last settlement: Consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office: Or, he may gain a settlement, whilst his master shall gain none, as when he resides upon a tenement under 10 l. a year: And of consequence, the master may be removed, when the apprentice cannot be removed; and in such

such case the master shall be necessitated to apply to the justices, to compel the apprentice to go along with him.

E. 21 G. 2. Stratton and Llewannick. Two justices make an order to remove *Stephen Petbick* from *Llewannick* to *Stratton*. And upon appeal, the sessions confirm that order. The case was; *Stephen Petbick* the pauper, at his age of 14 years, was by his mother (being then a widow) placed as an apprentice with his brother in law *John Petherick*, by trade a cordwainer, in the parish of *Stratton*, for six years, to learn the said trade: But at the time of placing him as aforesaid, no indenture of apprenticeship was executed. His mother agreed to pay to his master 4l. in hand, and 4l. at the end of three years, and his master was to find him meat, drink, washing, and lodging during the said six years, and his mother was to find him cloaths during the said term. All which was performed accordingly. And the said *Stephen Petbick* believes, that in or about the last year of the said term, one part of an indenture was prepared, in order to bind him an apprentice to the said *John Petherick*, pursuant to the said contract or agreement: But he doth not remember that he executed the said part, or that it was executed by his mother and the said *John Petherick*, or either of them, nor what is become of the said one part.—It was moved to quash these orders, for that all this doth not amount to such a binding as will gain a settlement, there being no indenture duly executed. The court seemed to think this exception too strong to be answered; and made a rule to shew cause why the orders should not be quashed: Which rule was afterwards made absolute, without defence. *Burr. Sett. Cas. 272.*

Binding to be in writing.

H. 22 G. 2. Mawman and Falmouth. It was moved to quash an order of two justices, and an order of sessions confirming the same, for removing *Jane Luckey* from *Falmouth* to *Mawman*, upon the foundation of her having served an apprenticeship there. The objection was, that it was only by a parol binding; whereas the act requires that it be by indenture. On a rule to shew cause, the counsel on the other side acknowledged that it could not be supported. *Burr. Sett. Cas. 290.*

T. 17 G. 3. Whapload and Fleet. Two justices removed *Ann Burkett* from the parish of *Whapload*, to the parish of *Fleet*; the sessions on appeal confirmed the order, and stated the following case: That *Ann Burkett* the pauper was, when an infant, bound an apprentice by the overseers of *Whapload* aforesaid, to *Thomas Pears* of the same place, till she should attain her age of twenty-one years, or marriage;

Not necessary that the master should sign a counter-part of the indentures.

marriage; that the original indenture was properly executed by all the parish-officers, and allowed by two justices; the counter-part was also allowed by the same justices, but neither the said indenture, nor counter-part, was executed by *Pears* the master. That the master nevertheless accepted the said indenture, and the pauper, whom he considered as his apprentice till the apprenticeship expired. That the pauper lived with her master, as his apprentice, for five years, when, with the express consent of her master, she let herself to live with *William Cockayne* in the parish of *Fleet* aforesaid, and did live there a year under that hiring. That she afterwards hired herself, with the same consent, to one *Belton* in the parish of *Sutton*, and lived there about half a year; she then returned to live with her master *Pears* as his apprentice, and continued with him six weeks, when, with his consent, she hired herself at different times to several other places, in different parishes, but did not live in any of them for a year; and always received the wages from her different masters, and no ways accounted for the same to the said *Pears*: That at the time she attained her age of 21 years and for 4 months before she had lived, with her master's consent, with one *Briggs* of the parish of *Thorney*, where being with child, she soon after left her place, and went to *St hapload* aforesaid, who removed her to *Fleet* aforesaid. — *Mansfield*, in support of these orders, contended, that by 8 & 9 W. c. 30. s. 5. the master is required to execute a counter-part of the indentures, and that this requisition not being complied with, the girl obtained no settlement by the apprenticeship. — By *L. Mansfield* and the court: There is no doubt; the binding was authorized by 43 Eliz. c. 2. s. 5. long before the act requiring a counter-part: But, though the binding was valid if the apprentice was received, it was doubtful, until that statute was made, whether the persons to whom such poor children were to be bound, were compellable to receive them; that statute was therefore made, and it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other respect confirms the power of binding, which was already fully established. Both orders quashed. *Cal. Caf.* 31.

To be stamped.

By the several stamp acts, the indenture is to be written on parchment or paper stamped with a 6 s. stamp; except indentures of parish apprentices, which are to be on a sixpenny stamp. And there are to be additional stamps (as aforesaid) in proportion to the value of money or other things given with the apprentice; except money given with parish apprentices or out of publick charities.

T. 17 & 18 G. 2. *Llanvair Daffyn Chyd and Llanlidan.* John Edwards, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. And it was ruled, that the indenture, not being on stamped parchment or paper, could not be given in evidence at all, being absolutely void to all intents and purposes. *Burr. Sett. Caf. 236.*

M. 16 G. 2. *Holbeck and Gilderson.* Peter Orange the pauper was bound a parish apprentice by indenture; but the indenture being produced, it appeared not to be stamped. It was objected, that by the 5 W. c. 21. which lays a duty of 6 d. upon the indenture of a parish apprentice, it is enacted, that such indenture shall not be given in evidence, nor be available in any court, till the duty and also a penalty of 5 l. be paid, and the parchment or paper stamped. And by the court: This indenture was necessary evidence to make out the proof of a binding by indenture; for that binding could be no otherwise proved but by the indenture; and the indenture being not stamped could not be admitted as evidence, and the justices ought to have paid no regard to it. *Burr. Sett. Caf. 198.*

H. 4 G. 2. *Cuerden and Leiland.* On a special order of sessions it was stated, that the pauper was bound apprentice by indenture, and the master had 20 s. paid him; that he served three years; but that the master never paid the duty of 6 d. in the pound according to the 8 An. c. 9. s. 29. which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to Fortescue J. who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained; and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the king's bench, the order was quashed; for they said, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And tho' it was a hard case, they could not break thro' the positive words of the act. *Str. 903. 2 Sess. C. 134.*

Money paid
with the appren-
tice.

E. 19 G. 2. *Baxter and Fairlam.* The single question upon a demurrer was, whether an indenture of an apprenticeship, where 6 d. is mentioned to be the sum given with the apprentice, be or be not void for want of the duty being paid for the sum so given. By the court: No duty was intended to be paid for so insignificant a sum, there being no coin in England small enough to pay it. And
by

by the act no stamp is required for less than 20 s. 1 *Wilson*, 129.

H. 28 G. 2. Yarmouth and St. Margaret's in Norwich. The pauper *William Jackson* was bound and served a seven years apprenticeship in *St. Julian's, Norwich*. But it appeared that the apprenticeship was in consideration of 6 d. given to the master with the said apprentice, and no duty was proved to be paid for the same. It was objected, that this indenture was void to all intents and purposes. But on shewing cause, the point was given up, on the authority of *Baxter and Fairlam*. *Burr. Settl. Cas.* 379.

H. 7 G. 3. St. Matthew's Bethnal Green, and St. Botolph's Aldgate. The sum of 5 l. was inserted in the indenture as given with the apprentice, and was paid to the master accordingly, and the indenture had no stamp denoting the duty of 6 d. in the pound being paid by the master for the said sum. This sum was paid out of a voluntary annual subscription for putting out children apprentices brought up at the charity school of the parish of *St. John Wapping*; and trustees are appointed annually for managing the said charity, and a treasurer. It was objected, that this being a private and not a permanent charity, and consequently not within the exception of the act of parliament as to public charities, the indenture therefore, not being stamped, was void. But by *L. Mansfield* and the court; It is a public charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious: a private charity might be calculated to evade the act, but a public one cannot be supposed to have been so. *Burr. Settl. Cas.* 574.

But upon payment of the duty and penalty, and a receipt thereof from the stamp-office produced in evidence, the writing is made good. 8 *Mod.* 365.

Money given to
clothe the ap-
prentice.

E. 13 G. 2. North Oram and Overden. The mother of *Samuel Spencer* the pauper proposed to put him an apprentice to a master at *North Oram*, who refused to take him because he wanted clothes; but proposed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was thereupon agreed, that the grandfather should pay 30 s. to the master to clothe the boy withal; and that the master should take him as an apprentice. And in pursuance of that agreement, the master did lay out 30 s. in clothing for the boy. And afterwards an indenture was drawn and executed by the master and the said *Samuel Spencer* the apprentice: And the 30 s. agreed to be given and

and laid out as aforesaid was paid by the grandfather to the said master. And in consequence thereof, the said apprentice served his said master under such indenture and agreement for six years in *North Oweram*. And in the said indenture a covenant was made and mentioned, for the said master to find clothes for the said apprentice during all the said term. But in the indenture no mention was made of the said sum of 30 s. so agreed to be given as aforesaid, neither was any duty paid for the same, nor was the said indenture stamped with the additional stamp required by the 8 *An. c. 9.* to denote such sum given with the apprentice. It was urged, that the apprentice hereby gained no settlement; both because the sum given with him was not inserted in the indenture in words at length, and also because the indenture was not stamped with the said additional stamp. By the court: The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon the state of the case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy: And the grandfather was obliged to repay him, and did repay him. This clothing was before the binding; so that it amounts to no more than putting a boy apprentice ready clothed. It is not a præmium received by the master. The statute means money given for the benefit of the master. But he has no benefit from this 30 s. He was not obliged to clothe the boy before he was his apprentice; and this agreement was executed before the indenture was sealed. And it was adjudged that the apprentice gained a settlement under the said indenture. *Burr. Sett. Cas. 145.*

H. 30 G. 3. K. v. Walton in Le Dale. Richard Cunliffe, and his family, were removed from *Walton in Le Dale* to *Kirkham* both in *Lancashire*. On appeal it was admitted that the pauper's original settlement was in *Kirkham*, but the appellants insisted that he had gained a new settlement by apprenticeship in *Walton*; and in support of it offered in evidence an indenture of apprenticeship by which he bound himself to *Croft* and *Hall*, calico printers, for 7 years: The indenture contained besides the usual covenants, a covenant on the part of the pauper, that he would provide for himself meat, drink, washing, lodging, apparel, and physic during the term; and his masters covenanted to pay him 5 s. per week for the three first years, 6s. per week for the 4th and 5th years, and 7s. per week for the 6th and 7th years. The indenture also contained a proviso that in case the

Apprentice covenanted to provide for himself meat, drink, &c. and the master to pay him wages

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pauper should be visited with sickness, and thereby rendered unable to perform his work, or should neglect the same, he should not be entitled to any wages during the time of such sickness or neglect. And in case he was not employed at the business for which he was bound, then his masters should be at liberty to reduce one half of his wages for 2 months yearly during the term. The pauper served 2 years in *Walton* under this indenture, which was written upon the proper stamp, but no additional duty was paid according to 8 *An. c. 9*. The respondents insisted that the indenture was inadmissible in evidence, and void not only for want of a stamp for the additional duty, but also on account of the nature of the contract and the clauses contained in the indenture; but the sessions thought otherwise, and reversed the order. — *L. Kenyon Ch. J.* The case of *Pennington v. Sudall* which has been cited, cannot be taken as an authority deciding any thing. If we were to infer any thing from the case, it would rather be the reverse of that which has been supposed; because the case went off on an agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a legal apprenticeship. The principal question, relative to the additional stamp duty, cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain things, which it is said the master is bound by law to provide for him, and for which it is contended an additional stamp duty ought to have been paid, because it is a benefit to the master: But on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say that those payments were not an equivalent for the maintenance, &c? I believe they are much more. But before we can decide the material question, the justices must find the fact whether those payments were or were not an equivalent. I therefore studiously avoid giving any opinion on the general question: and it is enough for me so far at present, that it does not appear, but that the master gave an equivalent for the benefit which he received. — *Buller J.* I do not see any thing like a benefit to the master, for which an additional duty ought to have been paid. The master covenanted to pay the apprentice so much *per week*; {that clearly is not within the statute. Then it was provided, that in case the apprentice should be ill and unable to perform his business, or neglect

neglect to do it, he should not receive any wages: but this was no benefit to the master; it was only an agreement that he *should not pay*, but not *that he should receive any thing*. *Per Curiam*, order of sessions confirmed. *Durnf. and East*, 3 *V.* 515.

T. 32 G. 3. K. v. Leighton. J. Price and his family were removed from *Leighton* to *Church Coppenhall* both in *Cheeshire*. The sessions quashed the order, and stated the following case: The pauper was bound an apprentice by his father (who was settled in *Woolstanwood*) to *R. Lindrop* of *Church Coppenhall*, shoemaker, under an indenture for 4 years, to learn the trade of a shoemaker, in which was a covenant by the father that he would, at his own charge, find and provide for his son good, competent, and sufficient meat, drink, and lodging on every *Sunday* during the said term, and would provide him with clothes and apparel of all sorts, (except working aprons and shoes,) and also washing. There was also (*inter alia*) a covenant on the part of the master to provide for the apprentice meat, drink, and lodging (except on *Sundays*), during the term. The indenture was properly executed and attested, and written on a 5s. stamp. The pauper served the 4 years in *Church Coppenhall* for six days and nights in each week, and went to his father's at *Woolstanwood* on every *Sunday*. The father expended 5 l. and upwards in clothing his son, and in providing meat, drink, &c. for him on *Sundays* during the term; for this no additional duty was paid according to the 8 *An. c. 9.* — *L. Kenyon Ch. J.* This has been *vexata questio* ever since I came into *Westminster Hall*; and various opinions have been entertained upon it. It is true that if an indenture be taken to the stamp office, they will set their value upon every supposed benefit to the master for the sake of the revenue: but that is by no means decisive. The question depends on 8 *An. c. 9. s. 32. 45.*; the former *s.* imposes a duty on all sums of money given with any apprentice, &c. and the latter enacts, that where any *thing*, not being money, shall be given, contracted for, or secured to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in such manner, &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by *Aston J.* a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master for which a duty should be paid. It occurred to me early in the argument that, in order to see what would or would

The friends of the apprentice covenant to maintain and clothe him.

not be considered as a benefit to the master, it was necessary to enquire what were the duties that resulted from the bare relation of master and apprentice. And I think that the 8 and 9 W. 3. c. 30. s. 5. throws a great deal of light upon that point; because if from the time of the statute of *Eliz.* to that time, masters could not be compelled to provide for parish apprentices, and that law was made for the purpose, it shews that the obligation of providing for apprentices did not result from the mere relation of master and apprentice; for if it had, that part of the statute of W. 3. was unnecessary. The case of parish apprentices is the only one where an apprentice can be put out *volens volens*: all the others depend on the express stipulation to be made by the parties interested. It has never been held that the obligation of the master extended to the providing of clothes for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance; for the former are equally necessary with the latter; and in other cases than those of parish apprentices, clothes are generally provided by the friends of the apprentice. But if every thing is to be valued and a duty set upon it, from which a benefit arises to the master, it might be equally said that the earnings of the apprentice should be liable to the duty. The argument therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Asson J.* is in all cases worth resorting to, but particularly so in cases of sessions law, in which he was remarkably conversant. And his opinion in the case alluded to is very strong to this point. I think, therefore, that the clear meaning of the statute of *An.* is, that where money, or money's worth, is given to the master by the friends of the apprentice by way of premium, a duty ought to be paid for it; but that where meat, clothes, &c. are to be provided by the master, no duty is payable, because there is not any *thing given to the master*. *Buller* and *Grose J.* delivered their opinions to the same effect. Order of sessions quashed. *Durnf. and East*, 4 V. 732.

Whether the indenture need to be indented,

T. 5 & 6 G. 2. K. and Mellingham. A person was bound by indenture, though not actually indented; and the sessions adjudged the settlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and also whatever the writing was, the pauper was no party to it, nor could be concluded by it: And a deed poll will not bind an infant, nor a poor person put out by the overseers, without his own contracting; for the statutes which make such covenant bind.

binding upon them, do require that the binding be by indenture. And by the court, The exception must be allowed, and the order quashed. 1 *Seff. Caf.* 330.

And this consideration was the cause of making the statute of the 31 G. 2. c. 11. above-mentioned, which enacts, That no person bound by writing not indented, being legally stamped, shall be liable to be removed for that defect only.

In the case of *K. v. Hamfall Ridware, T. 29 G. 3.* it was determined, that an indenture of a parish apprentice assented to by two justices *separately* is void, and that no settlement is gained by serving under it. *Durnf. and East, 3 V. 380 (a).*

The assent of 2 justices necessary and they must be together.

H. 3 G. 2 Newberry and St. Mary's in Reading. A poor boy, of 14 years of age, bound himself apprentice for 7 years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the court, It did gain him a settlement; for an infant may make an indenture for his own benefit. *Foley, 154. Andr. 373.*

Infant binding himself.

M. 10 G. 2. St. Nicholas's and St. Peter's both in Ipswich. There was an indenture of apprenticeship for four years; which the apprentice served accordingly: Whereas the statute of the 5 *Eliz.* requires that it shall not be for less than 7 years. And the question was, whether this should gain a settlement? It was urged, that it could not; for that the said statute of the 5 *Eliz.* enacts, That all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and it is appointed by the same statute, that persons dwelling in cities and towns corporate shall take apprentices for 7 years at the least; whereas this master, dwelling in a town corporate, hath taken this apprentice only for 4 years. But by *L. Hardwicks Ch. J.* and the court: The indenture is not void, but only voidable, at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice. And the difference between this and the case of *Cuerden and Leyland (b)*, is, that the act about the stamps not only says, that the indentures not stamped shall be void, but goes on and adds these words, *and not available in any court or*

Binding for less term than 7 years

(a) See this case more fully, 1 vol. title *Apprentices.*

(b) *Ante*, this same title.

Poor. (Settlement by apprenticeship.)

place, or to any purpose whatsoever, and that no indenture required by that act to be stamped, shall be given or admitted in evidence, unless the party first make oath, that the sum really given with the apprentice, or contracted for, was truly inserted. And yet the order made in that case was grounded upon the indenture, which was not stamped, nor was the duty paid. Therefore the justices admitted a matter in evidence which they ought not to have done. And it hath been holden, that if the justices admit evidence which they ought not to admit, it is a sufficient reason for quashing their orders. *Burr. Settl. Cas.* 91.

Binding for further term than the law allows.

T. 19 G. 2. St. Petrox and Stoke Fleming. Anne Giles, the pauper, was bound a parish apprentice in *St. Petrox*, until her age of 21, without the alternative or till time of marriage as the statute requires. It was urged, that by this binding and service she gained no settlement, the binding being contrary to the statute, and therefore void. But by the court, the above case of *St. Nicholas's* and *St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement. *Burr. Settl. Cas.* 248.

Apprentice of an uncertified man serving a certificate man.

E. 9 G. 3. Romsey and St. Michael's Southampton. Saul Bishop was bound an apprentice to William Kearly of All Saints for four years; and served him there three years. It was then agreed between them and one Samuel Dagnell, residing in Romsey under a certificate from *St. Giles's* in Reading, that Bishop should work with Dagnell the remainder of his apprenticeship; for which, Kearly was to receive 2 s. a week. Bishop accordingly served him, and resided with him in Romsey. The question was, Whether the apprentice gained a settlement by this service in Romsey? It was argued, that he did; not as serving the certificate man, but as serving Kearly his original master in that parish. The duty must be considered as performed to the original master; and it was, in the present case, for his benefit, as well as by his order. The act of 12 An. c. 18. doth not extend to this case. The words of it are decisive. They are confined to apprentices bound by indenture to certificated masters, and claiming settlements by serving under such indentures of apprenticeship to original masters who came into the parish by certificate. But this apprentice was bound to a master who was not a certificate man. He was in no sense apprentice to the certificate man; but originally was, and continued to be, the apprentice of Kearly; and the last 40 days of his service, by the permission and approbation of his original master, gained him a settlement.—On the other hand, it was insisted, that the true

true meaning and construction of the act of parliament is, that no apprentice or hired servant shall gain a settlement in a parish to which the master came by certificate, and in which the master himself was thereby precluded from gaining one. And this assignment of the apprentice to a certificate man is exactly within the same reason, as if the original binding had been to a certificate man. — By *L. Mansfield*: This question is plainer than any argument can make it. The end and intention of the act was, to prevent certificate persons from bringing a charge upon the parishes into which they came by certificate. How then can it be imagined, that another man's apprentice should gain a settlement by serving him in that parish, when his own apprentice is made incapable of doing so? And the court were unanimously of opinion, that the apprentice gained no settlement in *Romsey*. Bur. Settl. Cas. 640.

T. 31 G. 3. K. v. Hinckley. The pauper *J. Furborough* was born at *Frowlesworth*, where his father was settled, and at 9 years old was bound a parish apprentice to *D. Palmer* of *Hinckley*, who was residing there under a certificate from *Copson*. The pauper, after serving part of his time with *Palmer*, was assigned by him to *J. Hurst*, a legal parishioner of *Hinckley*, under an agreement that *Hurst* was to pay 1s. a week to *Palmer*, and which was paid accordingly. He served *Hurst* in *Hinckley* above 40 days before he left him. The sessions being of opinion that he gained a settlement by serving *Hurst* under the assignment, confirmed the order by which he and his wife were removed from *Frowlesworth* to *Hinckley*. — The court took time to consider, when *L. Kenyon* Ch. J. delivered their unanimous opinion. The question in this case is, whether any settlement was obtained by the apprentice by his service under his 2d master, who was a parishioner of *Hinckley*, in that parish, his first master by whom he was assigned having been certified thereto. The first impression made upon my mind was, that as the last 40 days of the apprenticeship were served under a person who was not under the disability of the certificate, such service gained a settlement: but upon looking more fully into the authorities cited, on which I had formed my first opinion, and advertent more particularly to the words of the statute of *Anne*, I am disposed to think that a settlement was not acquired by the service under the indenture with the 2d master in *Hinckley*, altho' he were not residing there under the certificate. And that opinion which we have formed proceeds principally on the words of the statute of *Anne*, and the view with which it was

Apprentice to a certificate man serving an uncertified man in the same parish.

passed. By the general tenure of the certificate act, persons settled in one parish, bringing a certificate with them into another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted cannot refuse to receive them. But the mischief was, that tho' the certificated persons themselves could not gain a settlement in that parish, yet they were the means of conferring settlements on others, by taking servants and apprentices, which was thought to be a great hardship on those parishes who were bound to receive them under the certificate. Therefore to provide against that inconvenience the 12 Ann. *st.* 1. c. 18. (a) was passed. There has never been any precise determination on this point; and therefore we think it better to abide by the words of the act, from whence the intention of the legislature can be best collected; and the act having expressly provided, that persons bound apprentices to certificated men shall not *by virtue of such apprenticeship, indenture, or binding*, gain a settlement in such parish, it is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained there by virtue thereof: for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish. As to the case of *K. v. Petham* (b), where it was held, that the apprentice of a master certificated to *Underden* might gain a settlement under an assignment to a 2d master residing at *Lidd*, which was a third parish; that does not govern the present; because it does not interfere with the policy of the statute of *Anne*; for the parish of *Lidd* had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover *Hinckley* in the broadest manner, to prevent any burthen coming on that parish on account of their obligation to receive the certificated person. The other case principally relied on (*viz.*) the last case of *Romsey* parish, has no application to the present question; for tho' it was contended generally at the bar, that the statute of *Anne* was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original masters, yet the court by no means adopted that argument, but decided rather on the

(a) See the beginning of this title.

(b) *Ante*, title, Door. Certificate.

ground that no settlement could be gained by the apprentice through the medium of a certificated person in that parish. Therefore as there has been heretofore no determination on this point; as the statute of *Anna* was passed for the express protection of the certified parish; and as the words of the act are very particular and positive in favour of that parish; we see no reason to restrain the meaning of them to a service with the original master. Both orders quashed. *Durnf. and East*, 4 *V.* 371.

E. 26 G. 3. St. Peter in the borough of *Derby* and *Chaddeſden*. Two justices removed *Benjamin Pratt*, and his wife and four children, from *St. Peter Derby* to *Chaddeſden*; the sessions quashed the order, and stated the following case, — That *Pratt* the pauper, on the 5th November 1751, was bound an apprentice for seven years to *Joſeph Pinn*, of *All Saints*, in *Derby*, to which place *Pinn* had a certificate from the parish of *Smalley*; the pauper served his master in *All Saints* about five years and a half: And the master and his family at *Lady-day* 1757, removed to *Chaddeſden*, where he resided till 14th January 1758, when *Smalley* granted *Pinn* the master a certificate. Between *Lady-day* 1757, and 14th January 1758, the pauper served his master upwards of 40 days in *Chaddeſden*. *Pinn* never returned to *All Saints*, but continued at *Chaddeſden* under the certificate: But the pauper returned to *All Saints* in the summer of 1758, and served his master there upwards of 40 days after *Smalley* had granted the certificate to *Chaddeſden*. The sessions were of opinion that the pauper gained a settlement by such last service in *All Saints*. — The only question was, whether the second certificate to *Chaddeſden* discharged the former one to *All Saints*, they having both been given by *Smalley*? — The court being of opinion that this question was determined by *K. v. Bridbam*, *H. 25 G. 3.* discharged the rule. Order of sessions affirmed. *Caf.* by *Durnf. and East*, 1 *V.* 218.

H. 32 G. 2. St. Cuthbert's and *Westbury*. A person settled at *St. Cuthbert's* was bound apprentice to a man residing at *Westbury*, but whose settlement was at *Harptree*, a neighbouring parish. After the apprentice had served 22 days, his master obtained a certificate from *Harptree*, and delivered it to the overseers at *Westbury*; and the apprentice served there further with his master for three years. The question was, whether the apprentice hereby gained a settlement at *Westbury*? By the court: Before the act, serving under an apprenticeship to a certificate man for 40 days in the parish where the master lived, would have gained

Apprentice to a man who had two certificates from the same parish to different parishes at the same time,

Apprentice bound before the execution of a certificate.

ed a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person *residing under a certificate*, he shall not thereby gain a settlement. Now here is no service for forty days, under an apprenticeship to a master who did not reside in this parish under a certificate; therefore the apprentice in this parish did not gain a settlement. But it would have been otherwise if he had served forty days, before his master became certificated. *Bur. Settl. Caf. 470.*

Apprentice settled, not removable.

An apprentice well settled, being with a master removable, cannot be removed with him; but the master may complain on the covenant. *Cases of S. 211.*

Settlement of the apprentice doth not depend on the settlement of the master.

H. 4 Ann. St. Bride's and St. Saviour's. A woman who was settled at *St. Saviour's*, with her apprentice by indenture, came and took a lodging in *St. Bride's*, and there continued above 40 days with her apprentice, who served her there. This was held, by the court, to be a settlement of the apprentice at *St. Bride's*, though the mistress had no settlement there. *2 Salk. 533.*

Residence where the party lodges.

M. 11 G. St. John Baptist and St. James's Bishop Canning's. Binding and serving will not make a settlement, but the settlement must be by inhabiting; which cannot be but where the party lodges. *L. Raym. 1371. Str. 594.*

E. 3 G. K. and St. Olave's Jury. An apprentice is bound to a cobbler, who keeps a stall in one parish, lies in another, and the boy in a third; and the sessions adjudge the settlement where the stall is, because the service was there. But by the court, the boy has gained no settlement in any of the three parishes; for the stall is not sufficient to give him one, the master lying in another parish. And the order was quashed. *Str. 51.*

[Note, This case seemeth to stand alone. And by the analogy of the other cases, with respect both to apprentices and servants, it seemeth that the cobbler's apprentice gained a settlement in the parish where he lodged. A man may be occupied in several parishes in the day time, but his home and habitation seems to be where he draws to at night.]

T. 3 G. St. Mary Colechurch and Radcliffe. A boy was bound apprentice to a seafaring man, and served him for a quarter of a year in the day time on land, in the parish of *St. Mary Colechurch*, but lay every night on shipboard in *Radcliffe*. But the justices, apprehending the settlement to be where the services was, send him thither. It was moved to quash this order, and was likened to the aforesaid case of the cobbler. By *Parker Ch. J.* A man properly inhabits where he lies; as in the case where the

house

house is in two leets, he is to be summoned to that in which his bed is. And the order was quashed. *Str.* 60. *Cases of S.* 105. *Foley*, 159.

E. 5 G. 3. Burton Bradstock and B thenhampton. James Capon, the pauper, was bound apprentice for seven years to a master at *Bridport*, then owner of a ship; and the apprentice went on board the said ship, and there served his apprenticeship. The said ship was employed in a coasting trade from *Bridport* harbour to many other ports. And during all that time, the said harbour was, and was considered by the captain and sailors, as the proper home of the ship, and to which she returned at the end of every voyage. And during the last 40 days of the apprenticeship, the said James Capon resided, lodged, and served his master on board the said ship in *Bridport* harbour aforesaid. *Bridport* harbour is a basin in the parish of *Burton Bradstock*, which by an act of parliament in the 11 G. 2. was dug and made on a piece of land lying within the said parish of *Burton Bradstock*.—By *L. Mansfield* and the court: Lodging in a parish is the same, whether it be on board a ship or on land. Casual residences, or accidental inhabitations, are out of the present case. This harbour or basin is stated to be the proper home of the ship, and to be within the parish of *Burton Bradstock*: And the service was *bona fide*, without any pretence of collusion, performed in that parish. Therefore there seems to be no material difference between this case, and the ordinary cases of gaining settlements in parishes by apprenticeship. *Bur. Settl. Cas.* 431.

M. 7 G. 3. Castleton and Hundersfield. The pauper John Holroid was bound to a master at *Castleton* for seven years. He worked, dieted, and lodged with his master in *Castleton* for four years and an half; and then married a woman who lived in *Hundersfield*. After which marriage, he worked and dieted all along with his master in *Castleton* in the day time, but lodged at nights with his wife at her father's house in *Hundersfield*, until the expiration of his apprenticeship, which was about two years and an half from the time of his marriage. By the court clearly, he gained a settlement at *Hundersfield*, where he lodged. *Bur. Settl. Cas.* 569.

T. 12 G. 3. Charles and Knowstone. John Hodge was bound apprentice by the parish of *Knowstone*, to John Fisher of *Knowstone*, for an estate which Fisher rented of Mr. *Loosemore*; who had covenanted with Fisher to discharge him from any expence that he might incur thereby. On Fisher's application, Mr. *Loosemore's* widow and re-

Forty days residence necessary to gain a settlement.

pre-

presentative (he being then dead) took the boy; received the parish money with him; carried him home with her; and afterwards removed to the parish of *Charles*, where the boy resided with her about three years, and then became a cripple by losing both his feet. She thereupon returned him to *Fisher*; who received him, upon her promise to pay him all the expence he should be at in taking care of him; and put him to live with his (the boy's) grandmother in *Knowstone*, at 8d. a week; where he resided above 40 days, and then was discharged of his apprenticeship by the quarter sessions. After which, two justices remove the said *Hodge* from the parish of *Knowstone* to the parish of *Charles*, where he served the last part of his apprenticeship before he became disabled and incapacitated for further service; and the sessions, upon appeal, confirm their order.—It was moved to quash these orders; for that the pauper gained a settlement in the parish of *Knowstone*, by his last 40 days residence there.—On shewing cause, it was argued, that this is not such a residence of the apprentice in *Knowstone* as could gain him a settlement. It was only a casual, accidental, temporary residence; and like residing in an hospital for cure. That *actual service* is necessary, in order to an apprentice's gaining a settlement. And therefore, this apprentice's legal settlement was in *Charles*, where he performed the service of his apprenticeship during the space of three years; and not in *Knowstone*, where he lay ill, as a cripple, and was totally incapable of performing any service at all.—Unto this it was answered, that the statute of the 3 *W. c. 11.* says only, that “if any” person be bound by indenture and *inhabit* in any town “or parish.” It says nothing about *service*, or performing any thing. Besides, might not the master dispense with the performance of the service? The cases about casual residence do not apply to this case. Here, the master was obliged to receive the apprentice again: And *Knowstone* was the parish where the original binding was.—By the court: The performance of *actual service* is not the thing material. It is the *residence*, the *inhabitancy* of an apprentice, in a town or parish for 40 days, that gains the settlement. And this residence here stated cannot be deemed a casual residence, and therefore is not to be compared to the cases under that head. The boy was bound to *Fisher* in *Knowstone*; resided about three years in the parish of *Charles*; then became a cripple; was sent back to *Fisher* at *Knowstone*; received by him; and put, by him, to live with his grandmother in *Knowstone*; and resided there above 40 days,

days, during which time he there gained a settlement.
Burr. Settl. Cas. 706.

H. 10 G. K. and Cirencester. There was an apprentice bound in the parish, who lived there off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit 40 days together. But by the court, That is not necessary. And the order for making it a settlement was confirmed. *Sir.* 579.

Forty days residence successive-ly not necessary.

M. 3 G. Parishes of Holy Trinity and Shoreditch. Parker Ch. J. delivered the resolution of the court. This is an order for the removal of one *Ferrer* from the parish of *Holy Trinity* to *Shoreditch*; by which it appears that *Ferrer* was bound an apprentice to one *Truby*, with intent that he should serve *Green*; which he did for three years: And it hath been insisted, that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there; and not in *Shoreditch*, where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch*, where the service actually was. It is the same thing as if *Truby* had turned him over to *Green*; in which case there would have been no question, but he had gained a settlement in *Green's* parish. *Str.* 10.

Apprentice serving another master with the consent of the first master.

E. 9 G. St. Olave's and All Hallows. A person is bound apprentice to a master who lives in *St. Olave's*. Afterwards, the apprentice by his master's consent, lives with another person in *All Hallows*. By the court: He gains a settlement in the last place; for a person may serve his master in another parish, or place; and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master. *Cases of S.* 153. *Str.* 554.

M. 8 G. 2. K. and St. George's, Hanover square. *Alice Wheeler* was bound by indenture a parish apprentice, to *George Leicester*, in the parish of *St. George's*, where she lived above 40 days under the indenture, and gained a settlement. Afterwards she was by parol agreement hired out by the said master to one *Hall* in the parish of *St. Mary le Bon*, and there lived and lodged above 40 days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said *George Leicester* her master received her wages, and found her clothes: By the court, the apprentice is well settled in *St. Mary le Bon*. 2 Sess. C. 138. *Str.* 1001. *Burr. Settl. Cas.* 12.

E. 30 G. 2. Fremington and Sherwell. *Mary Bevans* was bound a parish apprentice to one *Richards* in *Fremington*; who, after some time, declared that he had no business for her; and gave her permission to go and work

elsewhere, for her own benefit; and on his recommendation she was hired to one Mr. *Nott* at *Sherwell*, from the first of *June* till *Lady-day*, and served him there for the wages of 32s. ; and then went back to her master, with whom she stayed eight days, and then the term of her apprenticeship expired. This was held to be a good settlement at *Sherwell*, for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person, for her own benefit. She returned to her master, and was received by him, and stayed with him to the end of her term. And consequently, the service with Mr. *Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it. *Burr. Sett. Cas.* 416.

E. 30 G. 3. K. v. Holy Trinity in the Minories. Frances Whitfield, wife of *Joshua Whitfield* (a patient in *Guy's* hospital), with her three children, were removed from *St. Mary Magdalen Bermondsey*, to the *Holy Trinity* in the *Minories*; the sessions confirmed the order, subject to the opinion of the court on a case, stating, That *Joshua Whitfield* was bound an apprentice to *John Grimes* of *Tower-hill, London*, taylor, (being a place within neither of the said parishes,) for seven years. He served his master about six years of the term, when his master declined business, and informed the pauper that he wished him to get another master for his good. He then went home to his father, who lived in *St. Olave Southwark*, with whom he stayed three or four weeks, and if he could have got a service in that time he would have taken it; but not meeting with any, he returned to *Grimes*, who thereupon told him that he heard Mr. *Edwards* (who was also a taylor and lived in *Holy Trinity*) wanted a man; and told him to go to *Edwards*, and make an agreement with him for his good; and that he understood *Edwards* would take him for twelve months. He accordingly went to *Edwards*, and entered into an agreement with him in writing, and under seal, covenanting to serve him for 12 months in his business of a taylor; and *Edwards* covenanting to instruct him in that business, and find him in victuals, drink, and lodging, and at the end of the term to pay him 12l. in consideration of his service. The agreement was not stamped. He was nineteen years of age when he left *Grimes*; and the indentures were not assigned or cancelled; but after he had served *Edwards* two months, *Grimes* gave him up his indentures, and he continued to serve *Edwards* to the end of the year, and then received his wages, and applied them to his own use. The question was, whether he gained a settlement by

by his service with *Edwards* in the *Holy Trinity*? — *L. Knyon* Ch. J. It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in the above case of *K. v. St. George, Hanover-square*, that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master 40 days. The cases which have been decided upon this subject, have been determined on nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is the last case of *K. v. Fremington*, where it was held that the apprentice gained a settlement by serving the second master with the *consent of the first*. The case on the other side is that of *K. v. St. Luke's, Middlesex* (a), where a general licence given by the master to the apprentice to serve whom he would, without any consent to serve any person in particular, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said that this case must be governed by that of *K. v. Sandford* (b): but there is a solid distinction between that case and the present. For there the master gave up the indentures previous to the pauper's entering into the second service; but here the indentures were not given up till more than forty days had elapsed after the apprentice had served the second master; and that is sufficient to give him a settlement in that parish. Supposing this question were to arise in another shape, and that the pauper were prosecuted for exercising his trade without having served an apprenticeship according to the statute, there is no doubt but that the service with the second master would be deemed a service under the indentures previous to the time of their being delivered up — *Buller* J. The pauper could gain no settlement by living as a hired servant with *Edwards*, because the indentures of apprenticeship still existed; and the only question is, whether the master did *expressly consent* to that service or not? For all the cases shew that *mere knowledge* is not sufficient; knowledge does not imply consent.

(a) *Peß*, this same title.

(b) *Peß*, this same title.

Now here was an exprefs consent and recommendation of the first master to serve the second, and then the case comes precisely within that of *K. v. Fremington*. If indeed the apprentice had not gone into *Edwards's* service, he would not have gained a settlement by serving any other person, because a general licence to serve whom the apprentice chooses is not sufficient. By going into the service of any other person, the apprentice would have gone without the exprefs consent of the first master, and therefore might have been recalled by such master; but he could not have been recalled by the first master from the service of *Edwards*, because of the exprefs consent to serve *Edwards*. This is distinguishable from the case of *K. v. Sandford*; for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's service with *Edwards*. The other judges concurred. Both orders confirmed. *Durnf. and East, 3 V. 605.*

First master's consent necessary to the apprentice gaining a settlement by serving another.

H. 16 G. 3. Chudley and Ideford. *Mary Street* the pauper was legally bound apprentice by the parish officers of *Chudley* to *Philip Matthews* of that place, till twenty-one years of age or day of marriage; and lived with him there four years; when he assigned her, by parole, to *Joseph Stelliford* of *Ideford*; with whom she lived seven months; when she ran away from *Stelliford*, and returned to *Chudley*, and resided there for nine months as a servant to *John Hayes* at a publick house, with the knowledge, but without any exprefs consent of *Matthews* or *Stelliford*; and *John Hayes* did not know that the pauper was an apprentice. *Matthews*, the original master, resided in *Chudley* during the time that the pauper lived with *Hayes*, and frequently saw her there, and applied to *Stelliford* to take her back to *Ideford*, and threatened to put him to trouble if he did not. During the time that she was at *Chudley* as aforesaid, she was taken ill, and part of the time so ill, in the workhouse, that she could not be removed, and was then relieved by *Stelliford* in the workhouse there. She never returned to *Ideford*; but continued for the last two years of her apprenticeship in *Chudley* in good health, where the apprenticeship expired. It was argued, that the pauper's service at *Chudley* after her return from *Ideford*, was a service under the apprenticeship; being by consent of her master *Stelliford*, who manifestly considered her as his apprentice whilst she resided there. But by *L. Mansfield*: Here is no consent of the master, either exprefs or implied: his mere knowledge of it doth not imply his consent.

sent. And the whole court were unanimous, that no settlement was gained at *Cbudley* after the pauper's return from *Idesford*. Burr. Settl. Cas. 821.

T. 5 G. 3. *St. Luke's in Middlesex and St. Leonard's, Shoreditch*. The pauper, *William Hutchins*, was bound a parish apprentice to one *Frost*, a shoemaker in *Southwark*, till his age of twenty-four, and served him there three years. The master then removed to the parish of *St. Luke in Middlesex*, taking the apprentice with him, where he served four years. The master then told him to go about his business, and work for himself; but the indentures were not cancelled nor delivered up. The pauper hired himself as a journeyman to several masters of the same trade in different parishes; and believed the said *Frost* did not know what master he worked with after he left him, nor ever called upon him to account for what money he earned, and the pauper applied the same to his own use. He worked and lodged the last forty days before he attained the age of twenty-four years, in the parish of *St. Leonard's, Shoreditch*. The question was, Whether he gained a settlement at *St. Leonard's* by this service? By *L. Mansfield* and the court: The indenture of apprenticeship remained in force; and the relation of master and apprentice continued. But this service in *St. Leonard's* cannot be considered either as a service of his first master or as an assignment. He was incapable of making a contract by way of hiring and service, or of any act to gain a settlement. If his master had assigned him over to a particular person, it would have gained him a settlement as a service to the master. But this working in *St. Leonard's* was not carrying on the business of the first master there, nor any service under the indenture. But the settlement is in that parish where he had last served his first master as an apprentice for forty days, which was in *St. Luke's*. Burr. Settl. Cas. 542. Black. Rep. 553.

Apprentice working with several masters without the consent of the first master, gains no settlement.

E. 9 G. St. *Olave's and All Hallows*. If a master assigns over his apprentice, and the apprentice serves in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serves with one master or another, for he still serves by virtue of the first indenture. 1 *Seff*. C. 215.

Apprentice assigned.

T. 19 G. 2. *Petrox and Stoke Fleming*. *Anne Giles*, the pauper, was bound a parish apprentice to *Rebecca Gregory* of *St. Petrox*, till her age of twenty-one. She served there five years; when the said *Rebecca Gregory*, by indorsement on the indenture, delivered up the said indenture, together with all her right, interest, and term of

Apprentice assigned by indorsement on the indenture to a second master gains a settlement by serving him.

years then to come and unexpired, of the said apprentice, to *Philip Foale* of *Stoke Fleming*. And on the same day, the said *Anne Giles*, being then of the age of fourteen years, did voluntarily bind herself apprentice by indenture to the said *Philip Foale*; and served him under the said indenture at *Stoke Fleming* for several years. The question was, whether a settlement hereby was gained at *Stoke Fleming*? It was objected, that here was no regular assignment of the first indenture to *Philip Foale*, it being only delivered up, but not assigned. And the term was not expired when she bound herself to *Philip Foale*. By the court: Though an assignment of an apprentice (except in *London*, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement: for the service continued under the first binding. *Bur. Sett. Cas.* 250.

Apprentice and indenture delivered to a second master, and by him placed with a third master, gains a settlement.

E. 20 G. 2. Clapham and Austwick. *Michael Wilson* the pauper was bound a parish apprentice to one *Thomas Jackson* of *Austwick*, tenant to the reverend Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his tenant against all parish charges. *Thomas Jackson* carried him to his landlord, together with the indenture; who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for three years, in *Austwick*; and the reverend Mr. *Jackson* paid her 20s. a year. Then he lived with him in *Clapham* eight weeks; and then ran away to his mother, and remained a quarter of a year with her in *Austwick*, and the reverend Mr. *Jackson* consented to his being there. Then the pauper was placed with his brother, a mason, in *Austwick*, as an apprentice, by the reverend Mr. *Jackson*, who gave him a new suit of clothes. And he served his brother, as an apprentice, a twelvemonth or two, in *Austwick*; who took him as an apprentice, and quitted the reverend Mr. *Jackson* of him. But the representatives of the first master (who was then dead) knew nothing of this, nor ever assented to it; nor any thing of his living with his mother. It was objected, that this service of the third master in *Austwick* could not be considered as a service under an assignment, nor as a service under the indenture, for want of the consent of the first master. On the contrary, it was insisted, that this service must be considered as under the indenture; the first parol assignment being, to this purpose, good. *Wilson* was the legal apprentice of *Thomas Jackson*, and the equitable apprentice of the reverend Mr. *Jackson*. A legal assignment is not necessary. And this is a sufficient service under

der the first indenture. To this it was replied, that he gained his last legal settlement at *Clapham*, by the eight weeks service. The agreement with the mason is not an assignment, but an attempt of a new binding, whilst the first indenture was subsisting; which therefore is not good. By *Lee Ch. J.* and the court: The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This therefore must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with the reverend Mr. *Jackson*, at *Clapham*, the settlement had been there. But a settlement is fixed at *Austwick*, by the boy's living there a quarter of a year, with the consent of his master, and after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding. *Burr. Settl. Cas.* 226.

E. 7 G. 3. Tavistock and Kelly. *Rosamond Cook*, a poor boy, was bound a parish apprentice to *Richard Rundle* at *Lamerton*, with whom he lived there several years. Then *Rundle* transferred him by assignment to *John Prout* of *Miln Abbot*, with whom he lived until he was twenty years and a half old, at which time he offered his service to *Thomas Mason* of *Kelly*. *Mason* apprehending he was an apprentice to *Prout*, sent to him to know whether it was with his consent that *Cook* should live with him. To which *Prout* answered, with all his heart; he might live with *Mason* or any body else, provided he performed his agreement with him, which was, to pay one guinea a year during the remainder of his apprenticeship. Accordingly he lived with *Mason* in *Kelly*, for a year and upwards. The sessions being of opinion that he gained no settlement thereby, vacated the order of the two justices which removed the pauper from *Tavistock* to *Kelly*. It was moved to quash the order of sessions; and urged, that being a parish apprentice, and an infant, he could not be transferred without the consent of the justices, and himself could give no consent; and if he could, it would not follow, though he could live in *Kelly* as an apprentice, without the privacy of the first master *Rundle*, and there is no consent at all from him either express or implied. *L. Mansfield*

Apprentice assigned to a second master, and hired to a third master, with the second master's consent, gains a settlement by serving the third master.

said, the only question is, whether *Prout* consented? and it is clear he did consent: and his consent included that of the first master. And the order of sessions was quashed, and the order of the two justices affirmed. *Burr. Settl. Cas. 578. Black. Rep. 635.*

Indenture being delivered up, the apprentice cannot afterwards gain a settlement as serving under it.

T. 21 & 22 G. 2. St. Mary Kalendar's and St. Michael's. *John Miles* the pauper was bound by indenture an apprentice for seven years, to *John Gregory* of *St. Michael's*; and under that indenture lived with the said *John Gregory*, and served in *St. Michael's* for five years; and at the end of five years left his said master; and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. And about one year afterwards, the father of the said *John Miles* contracted with *William Stockdale* of *Twysford* for binding the said *John Miles* apprentice to the said *William Stockdale* for four years; and in consequence of that agreement, the said *John Miles* went to the said *William Stockdale* on trial, and lived with him in *Twysford* for one year and three quarters: But no indenture was executed, nor any other agreement made. And while the said *John Miles* lived with the said *William Stockdale*, *John Gregory* his former master lived within four miles of *Twysford*, and knew of his being in the service of the said *William Stockdale*. But no other proof was made, that the said *John Gregory* consented or agreed to the contract made between the said *John Miles*'s father and the said *William Stockdale*. The question was, Whether under the circumstances of this case, any settlement was gained at *Twysford*? By *Lee Ch. J.* and the court: There can be no ground to consider this as a settlement at *Twysford*, but upon supposing the first indentures to have subsisted, and that the service at *Twysford* was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity (and they are the same thing in this case), to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at *Twysford* was not under, but contrary to the first indenture. It was in consequence of a fresh agreement, and for a new term. *Bur. Settl. Cas. 274.*

Indenture being delivered up by the first master, and at the same time his con-

M. 22 G. 3. Deanbold and Langham. Two justices remove *William Ellingworth* from the hamlet of *Deanbold* in the parish of *Oakham*, to the parish of *Langham*; the sessions on appeal confirmed the order, and stated the following

sent to the apprentice serving a second master, such service gains a settlement.

lowing case: That the pauper *William Ellingworth* was bound an apprentice by the parish officers of *Deanshold*, to *Benjamin Stimson* of *Langham*, weaver, to serve till the age of 24 years; under which indenture he served upwards of four years, when *Stimson* his master failed, and having no longer employment for him, told his said apprentice he might go to his father *John Ellingworth* at *Oakham*; upon the apprentice's coming home, his father applied to one *Beecroft* of the said *Deanshold*, weaver, to take the said apprentice for the remainder of the term; the father of the apprentice then went to *Stimson*, who was at home under confinement, and told his wife that he had got a new master for his son; whereupon *Stimson's* wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said he had got a new master for his son, and desired the indentures might be given up; upon which *Stimson* gave the indenture to his wife, who delivered it up to the apprentice's father; the said *Stimson* having first made crosses upon it, as a token that he had resigned up the indenture and apprentice: the apprentice was under age. Soon after *Beecroft* went to *Stimson*, to ask him whether he was willing to resign up his apprentice, and to turn him over, as he was going to take him if he (*Stimson*) was willing, and his father would clothe him: *Beecroft* further said (if things came about) he hoped he (*Stimson*) would not fetch him again, to which *Stimson* replied he never would: *Beecroft* then said there was no occasion for a deal of trouble in turning him over, if he (*Stimson*) would be honest; and upon this, *Stimson* assured him he never would fetch his apprentice away, and *Beecroft* then declared, that if we have an agreement drawn to our satisfaction, it will be better than having so much trouble about it, and immediately went away satisfied that he might keep the apprentice as a turnover. The apprentice stayed with *Beecroft* three years and a half by virtue of the above transaction, and an agreement was entered into between the father of the apprentice and *Beecroft* in the presence of the apprentice, but he was no party to it, and the parish officers of *Deanshold* were perfect strangers to it; *Beecroft* kept the agreement and the original indenture. It was admitted by both parties, that at the time the indenture was delivered up to the pauper's father, *Stimson* considered the pauper perfectly at liberty, and that his indenture was so given up, that he might make any fresh agreement, and looked upon him to be quite at large.—By *L. Mansfield* and the court, There is no difficulty in this case: The indenture continues

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tinues in force, and the only question is, whether the service of the second was with the consent of the first master? for if so, it is a service under the indenture: of this there can be no doubt, for he consents expressly, he cancels the indenture, and directs it to be delivered to the father of the infant apprentice who came to him for the purpose of this assignment, and he undertakes to the second master that he would not reclaim him.——Both orders quashed. *Cal. Caf. 126.*

Master agreeing that the apprentice shall work for his own benefit, doth not imply giving up the indenture.

E. 15 G. 3. Offerton and Steckport. The pauper, when twelve years of age, was by indenture bound an apprentice by the churchwardens and overseers for seven years. The pauper was a party to the indenture: And it was allowed, pursuant to the statute. Near six years after, the pauper and his master entered into the following agreement: That the pauper, upon paying his master 12 d. a week, and providing for himself, should be at liberty to work for his own benefit during the remainder of his apprenticeship term; and the master should find him a loom for the remainder of his apprenticeship; and the master to receive the 12 d. a week, as a satisfaction for his service during the remainder of his apprenticeship. The pauper was of the age of 18 at the time of making the agreement. Neither the churchwardens nor overseers were privy to it; nor was the indenture cancelled or delivered up. The pauper married, and removed to *Offerton*, and there worked during the last 40 days before the justices removed him from thence, with the same tradesman who employed his master: and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12 d. a week; but the pauper was not able to pay him. The court held, that the apprenticeship continued; that the pauper's service in *Offerton* was a service under it; and that his settlement was in *Offerton*. *Bur. Sett. Caf. 802.*

Apprentice when under age cannot consent to his discharge.

H. 31 G. 2. Austrey and Grindon. Francis Oton, being then about ten years of age, was, in April 1744, bound a parish apprentice to Samuel Lythall of the parish of *Grindon*, till his age of 24. He served with his master there under the indenture till Michaelmas 1754; at which time, the master, in consideration of 40s. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed and written by the master on the indenture, which he then delivered up to the apprentice. The said apprentice then went and

and hired for a year, and served that year in the parish of *Higham*. Afterwards, to wit, at *Michaelmas* 1755, he hired for a year, and served that year in the parish of *Austrey*. He was then upwards of 23 years, but not 24 years of age. The two justices remove him to *Grindon*, judging him to have gained no settlement under these services. The sessions quash the order. It was moved to quash the order of sessions. Against this, it was urged, that the apprentice by his discharge became *sui juris*. No interest at all remains in the parish officers. Their power is only a limited power, and a parish child thus bound, agreeable to the statute of the 43 *El.* is upon the same foot as if he had bound himself; and when of full age, is at liberty to consent to his own discharge, and thereby to put an end to the apprenticeship. But if not, yet the service being by the master's leave and consent, it gains him a settlement in the place where it was performed; which was first in *Higham*, and afterwards in *Austrey*.—By *L. Mansfield Ch. J.* The whole depends upon the question, whether he was of age, or under age, at the time of his consenting to the discharge. And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing; for the consent of an infant apprentice is, as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so, as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service (as in the case of *Fremington* abovementioned); but was intended to be altogether general, and is even founded in a mistaken apprehension, that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing. And the order of sessions was quashed, and the original order affirmed. *Burr. Settl. Cas.* 441.

T. 26 G. 3. Sandford and Bishopstowton. *William Webber* and his wife and children were removed from *Sandford* to *Bishopstowton*. The sessions quashed the order, and stated specially:—That the pauper was legally settled at *Bishopstowton* by birth, and was bound an apprentice by the officers of that parish at the age of eleven to *Edmund Sage* of that place till 24. That he lived with the said *Sage* for five years, when his master gave him up his indenture, and recommended him to live with *William Verney* of the parish of *Chittlehampton Thatcher*, with whom the apprentice made an agreement as a servant for three years. That while he was with *Verney*, *Sage* had conversation with *Verney*, and desired him to keep back some of the pau-

Delivering up the indentures when the apprentice is under age does not discharge the apprenticeship.

per's wages to provide him with cloaths, apprehending, that otherwise he would come upon him. That about the expiration of that time he returned to *Bishopstowton* (where his master *Sage* then resided), and lived with one *Toyle* there, with his master's knowledge, who frequently conversed with the said *Toyle* while the pauper lived with him, but not upon the subject of his apprenticeship; that after the pauper had lived with *Toyle* three months, he came back to *Sage's* house and lived with him for a month, paying his master 6 d. a week for his lodging.—By *L. Mansfield*, It seems to me clear that the pauper could not gain a settlement after the first five years under the indenture as an apprentice, because neither party in fact considered the service as such; they considered the indenture as given up, and put an end to for ever; so that the service was not, nor was intended to be, in the capacity of an apprentice; neither did the pauper gain a settlement as a servant, because there could not be such a service in point of law during the existence of the indenture; so that though in reality there was a service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because in point of law the indenture still subsisted.—The other judges concurred.—The order of sessions quashed, and the original order affirmed. *Caf. by Durnf. and East*, 281.

Apprentice
when of full age
may consent to
his discharge.

E. 6 G. 3. Ecclesal-Bierlow and Warflow. The pauper *Samuel Wilshaw*, being a parish apprentice, after he had attained the age of 21 years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards, he hired for a year, and served that year in *Warflow*, which was within the term comprehended in the indenture. It was objected, that he was not *sui juris* when he entered into the contract to serve at *Warflow*, for the binding being by the parish under the 43 *El. c. 2.* he could not, though above the age of 21, cancel the indentures without the approbation of the overseers of the poor.—By *L. Mansfield Ch. J.* There seems to be no necessity of the parish officers joining in the consent to discharge this apprentice. There is no authority for it. And I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act empowers them to bind the man-child out apprentice, till he comes to the age of 24. And the act was necessary to make valid the binding of the male parish apprentice till his age of 24; for he could not be bound longer than till 21 without the aid of the act; and two justices are to assent to this. But the same reason does not hold as to the

the discharge of the apprentice; this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master; therefore the apprentice being of age, if the master and he agree to it, they two may dissolve the contract: if so, then this person was *sui juris* when he hired himself at *Warshaw*; and consequently he gained a settlement there by a hiring and service for a year. *Burr. Sett. Cas.* 562. *Black. Rep.* 592.

M. 9 G. 3. Notton and Roystone. Benjamin Waisin the pauper, when an infant, was bound out a parish apprentice to *Hannah Cuttle* of *South Hundly* widow, occupier of a farm within the said township, until he should attain the age of 24 years. After he had served about six years, she quitted the farm to her son *Stephen Cuttle*, and left the apprentice there with him. The said apprentice lived with *Stephen Cuttle* there several years. Afterwards, being desirous to leave the service, he applied to his master; who told him he might go where he pleased. Whereupon, he hired himself at several places, and received the wages to his own use. In *May 1766*, the said *Stephen Cuttle* gave up his indentures to him. In *February 1767*, he hired himself to *John Baildon* at *Notton*; and the said *Stephen Cuttle* being told of it in conversation, said, he thought it a good place for him. He served *Baildon* at *Notton* above 40 days, and then attained his age of 24 years.

—It was argued, that he gained a settlement at *Notton*, by having lived there 40 days, whilst he continued apprentice to *Cuttle*. *Hannah Cuttle* had not given up the indentures: Her son alone could not do it. The master being privy to this service of *Baildon* and consenting to it, or approving of it, it was then a service of the original master, though actually done at *Baildon*.—On the other hand, it was insisted, that this was no service under the indenture of apprenticeship. The pauper hired himself as being *sui juris*. The master did not consent to the pauper's serving any particular person. He was not even consulted about it. And when he heard of it, he only said, he thought it a good place for him. And he had before given him a general leave to go where he pleased.—The court were clearly of opinion, that the service with *Baildon* in *Notton* was not a service under the indenture of apprenticeship; consequently, his residence in that parish upwards of 40 days was not sufficient to gain the apprentice a settlement there. *Burr. Sett. Cas.* 629.

Apprentice when of full age leaving his master, and the indenture delivered up.

H. 26 G. 3. K. v. Harborton. Two justices remove *John Egbert* from *Harborton* to *Ashpreington*; the sessions quash the order, and state the following case:—That the

Apprentice discharged when of full age, but the indentures not delivered up.

the pauper was bound by the parish of *Harberton* an apprentice to *William Soper* of that parish, until 24 years of age; that he continued with his said master until he was within one month of 21 years of age, when he deserted his service, and was absent seven months, and then he returned to his father at *Harberton*, where he stayed a few weeks, and then offered himself as a servant to one *Edmonds* of *Ashpreington*, who refused to take him until he shewed a receipt from his master *Soper* for buying off his time, which receipt was in the following words: "Feb. 24th, 1783. Received of *Jahn Egbert* the sum of 4 l. 4 s. for the remainder part of his time, by me *William Soper*." That the receipt was obtained by the pauper's father at the request of the pauper. At the time the receipt was signed and the money paid, *Soper* offered to give up the indenture, which the father did not take, not thinking it material, and the pauper himself was not present: That the master continued to keep the indentures uncanceled until after the pauper was 24 years of age, when he delivered them up to him: That after the signing the said receipt, the pauper being then in his 22d year, hired himself for a year to serve the said *Edmonds*, and also another year, both of which he served at *Ashpreington*: That at the time of the pauper's hiring himself to the said *Edmonds* he shewed him the said receipt.—This was argued in *M. term* last, when the court took time to consider.—And now *L. Mansfield* (after stating the facts) delivered the unanimous opinion of the court: As I have often said, it is of more consequence in most cases, that the law should be certain, than what the law is. It is particularly so in questions relative to settlements. And perhaps if this court had never gone farther on the present subject than to inquire, whether the indentures were in fact cancelled or delivered up, it would have been more convenient than to have decided on the particular circumstances of each case, and to have examined whether they amounted to a relinquishment or cancelling of the indentures or not. But the cases have gone beyond that line; and therefore it might now be attended with more inconvenience to the publick to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined.—Where the facts stated are such, that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case

case in which a court of equity would give relief, it would be productive of great inconvenience and uncertainty; it would increase the litigation of the poor laws, which are already a disgrace to the country; and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect.— If the justices at their sessions, or even out of sessions, are to be erected into chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men, when left to decide *secundum discretionem boni viri*, must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all.— The question then is, whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time; he gave a receipt for the money as such, and offered them to deliver up the indentures: If it was not done in fact it was owing to the pauper's father not thinking it material, and on the pauper's attaining the age of 24 years, the master did in fact deliver up the indentures.— After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them.— The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at *Alhpreington*. *Cases by Durnf. and East*, 139.

E. 14 G. 3. *Chilvers Cotton* and *Weddington*. The pauper *Thomas Lawrence* was born in the parish of *Chilvers Cotton*, where his father then resided under a certificate from the parish of *Weddington*. When the pauper was of the age of eight years and a half, he bound himself apprentice by indenture, with his father's consent (who was party to the indenture), to *William Meigh* of the said parish of *Chilvers Cotton* for seven years, and served him there one year and a half, and then the indenture was destroyed, by consent of the master, the father, and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to *Thomas Maydlin* of the parish of *Bulkington*, for seven years, and served him in the said parish of *Bulkington* for four years, and

Apprentice bound by his father may be discharged although under age, by consent of all the parties to the indenture.

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and then this indenture was destroyed, by consent of the said *Thomas Maydlin* the master, the father, and the apprentice. The pauper after this returned into the said parish of *Chilvers Cotton*, and bound himself apprentice to one *Shaw* in the said parish of *Chilvers Cotton* for two years, and served him there the said two years. In about three years next after the expiration of the apprenticeship to *Shaw*, he hired himself for a year to *Lawrence Smith* of the said parish of *Chilvers Cotton*, and duly served him in the said parish for a year under the said hiring. And having become actually chargeable to the said parish of *Chilvers Cotton*, he was removed to the parish of *Weddington* which gave the certificate. It was objected, that the pauper did not remain under the character of a certificate person, having got clear of that impediment to his gaining a settlement in the parish to which he was originally certificated, by having obtained a settlement in *Bulkington*: After which, he was free to gain a subsequent settlement in the parish to which he was originally certificated. For the child of a certificate person, born in the parish to which its parent came by certificate, is not under the restraint of such certificate as to any other parish; but may gain a settlement in any third parish by serving an apprenticeship in such third parish. On shewing cause, it was insisted, that the pauper gained no settlement in *Bulkington*. The first indenture was not properly cancelled. The infant could not consent to the discharge of it. An infant's consent is void. And the case of *Austrey* was relied on, where the infant's consent was considered as no consent at all. He was therefore a continuing apprentice to *Meigh* of *Chilvers Cotton*, at the time of his being bound to *Maydlin* of *Bulkington*. Unto which it was answered, that they who make a contract, may destroy it; here, all who joined in making it have joined in destroying it. It must be taken that it was for the benefit of the infant to destroy it. It was for his benefit that he was bound out again at *Bulkington*, where he gained a settlement. And if it was for his benefit to destroy it, he might as well join in destroying as making it. As to the case of *Austrey*, it was the case of a parish apprentice, and the general expression there used must be understood according to the subject matter, and applied to the circumstances of that particular case. The principle there laid down is, that the apprenticeship of an infant cannot be dissolved without the consent of all parties concerned. The parish officers were there concerned in the original contract; they were parties, and had not consented; though their consent, as parties

ties to it, was necessary to the discharge of it. By *L. Mansfield*: The single question is, Whether the indenture of the apprenticeship in *Buckington* was void or not, there having been a former indenture, but such former indenture having been cancelled by agreement between the master, the father, and the apprentice? The case of *Austrey* was determined on particular circumstances. The question was, Whether the parish officers, who bound out the apprentice under a special authority, ought not to have been consulted about discharging him, and to have given their consent to it? The whole policy of the 43 *Eliz.* might be defeated, if the master and parish infant apprentice could by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case therefore is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is, because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another. *Burr. Sett. Cas.* 766.

E. 10 G. Buckingham and Shepton Becham. The master ran away: The apprentice hired himself for a year, and served the year. By the court: He gained no settlement, not being *jui juris*, nor of a capacity to hire himself; otherwise, had it been by consent of his master, or had his indenture been cancelled. *Cases of S.* 155. *L. Raym.* 1352. *Sir.* 582.

Master run away, apprentice hiring.

Note, In the *Cases of Settlements*, this case is reported under the name of *K. and Shipton Currey*; by *L. Raymond*, under the name of *Buckington and St. Michael Sebington*; by *Sir John Strange*, under the name of *Packington and Chepton Beencham*. None of all which seem to exhibit the true names of the contending parishes, for there are no such parishes as most of those here rehearsed; and therefore it is presumed to insert the real names of the parishes, which these appellations seem most probably to denote, namely, *Buckington and Shepton Becham*. And here it may be proper to observe once for all, the great inaccuracy in the names of places and persons, which every where occurs in the books of reports, arising (as it seemeth) from two causes: 1. From the reporter's taking down the name in court by the sound only, which oftentimes may cause a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible;

gible; the case being taken down in a hurry of the pen, and not published but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to restore such broken words to their genuine and known originals; so as to read instead of *Hedcome*, *Hedcorn*; for *Misserden*, *Missenden*; for *Trencham*, *Frencham*; for *Wooden*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutofcatur*, *Uttaxeter*, and many other such like.

Sir *James Burrow*, who from his situation, as being master of the crown office, hath opportunity to receive the true names from the records themselves, is extremely useful in this, as in other more important respects; and that, not only in the cases he reports himself, but in others occasionally referred to. In speaking of the proper method of intitling cases of settlement, he observes, "It may not be amiss to set forth a general rule, for intitling all cases arising upon orders of removal; the want of knowing, or the want of attending to which general rule, hath been the occasion of infinite confusion, in tabling and citing cases of this sort. The constant method of entering them in the rule book, is, to name the *King* as prosecutor: and the parish last charged with the pauper, and consequently appealing to the court of king's bench, as defendants. For instance: Two justices remove a pauper from *A.* to *B.*; and *B.* appeals to the sessions. If the sessions confirm the order, and *B.* brings the *certiorari*, the rule thereupon is intitled *Rex versus Inhabitantes de B.* But if the sessions discharge the original order, and consequently *A.* remains charged with the pauper, and brings a *certiorari* to remove the orders, then the rule bears for its title, "*Rex versus Inhabitantes de A.*" (*Burrow, Mansfield, 52.*) Nevertheless, as authors, in reciting these cases, and the learned counsel and court in their arguments, sometimes give the name of one of the parishes, and sometimes of the other, and sometimes of both; and the case in some instances may be easier apprehended, or explained with less circumlocution, by inserting at the head of it the names of both the contending parishes; that method is endeavoured to be pursued throughout this course of settlements, where both the names can with reasonable certainty be come at. Sometimes a case is reported, without the name of either of the parishes, but with the name only of the pauper; as *John Giles's case*, *Bridget Bayly's case*, and the like: In these, together with the names of the parishes, it seemeth essential to retain also the name of the pauper.

T. 13 G. 2. *East Bridgeford and Orston.* The master of a parish apprentice dying intestate, his widow, without any administration taken out, assigned the apprentice to *Edward George*, who with the consent of the apprentice, assigned him over, by verbal agreement, to *Thomas Baggaley* of *East Bridgeford*, for the remainder of his term of nine years. And he accordingly lived with the said *Thomas Baggaley* at *East Bridgeford*, and served out his time there, which was more than 40 days. This was unanimously holden to be a good settlement in *East Bridgeford*. For tho' an assignment of an apprentice be not strictly legal, yet where an apprentice has lived and served 40 days under an assignment, he shall gain a settlement, because of the consent, even tho' it be only a verbal agreement. *Burr. Settl. Cas. 133.*

E. 26 G. 2. *Eakring and Selson.* Two justices make an order to remove *George Witworth* from *Eakring* to *Selson*. Upon appeal, the sessions discharge that order. The case was, the said *George Witworth* was put out a parish apprentice to *Richard Tomlinson* of *Eakring* till his age of 20 years. He served his master under this indenture for several years at *Eakring*. About 3 years before he attained 20 years of age, he ran away from his master, and loitered for some time about the country. In the mean time his master died. And at *Martinmas* after, the said *Witworth* hired himself as a servant to *William Flint* of *Selson* for a year, and served him that year at *Selson*, and received all his wages to his own use, the executors of *Tomlinson* taking no notice of him. But he had not, at the expiration of the said service, attained his age of 20 years. And the sessions being of opinion, that the said *George Witworth* did not, by virtue of such hiring and service at *Selson*, gain a settlement in the parish of *Selson* aforesaid, reverse the original order. But by the court the order of sessions was quashed; for that after the master's death, the apprentice was at liberty to hire himself; and as he was hired for a year and served a year in *Selson*, his legal settlement was there. Apprenticeship is a personal trust between the master and servant, and is determined by the death of either master or apprentice. The counsel who were to have shewn cause against quashing the order of sessions, owned that it was not defensible. *Burr. Settl. Cas. 320.*

T. 14 G. 3. *Wrexham and Chirk.* An apprentice bound for three years, without any consideration, to a slater at *Wrexham*, served under the indenture for nine months: Then his master died; and he continued a fortnight with the widow, to complete the work unfinished by

by his master. Then, his mistress, having no employment for him, told him that he must not stay with her, and that he was at liberty to go where he thought proper. On his going away, he told his mistress that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, nor the indenture delivered up. His father then lived in the parish of *Chirk*, and he continued with him there two or three years. The court held that his settlement remained at *Wrexham*. The widow doth not appear to have had any interest; and no administration appears to have been taken out. *Burr. Settl. Cas.* 782.

H. 19 G. 3. Otterton and Stockland. Case specially stated: That the pauper was bound apprentice by the parish officers of *Stockland* to *John Davis* of that same parish, till 24 years of age: That he lived with him four years in that parish under the indenture, when his master died: That he continued with his master's son, who was his executor and had proved the will, for about seven years in that parish, when, being desirous of living with his uncle in the parish of *Otterton* to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave his consent accordingly: That thereupon the pauper went to his uncle in the parish of *Otterton*, and continued there with him the whole two years and a half, at the end of the first four months of which time, the pauper attained his age of 24 years. — It was argued on the one hand, that the contract between a master and his apprentice is merely personal, and dies with the master: That by law there can be no valid assignment of an apprenticeship: That an assignment is indeed evidence of the original master's consent to the apprentice's residence with the new master, but here the presumption failed, because the original master did not exist when the pauper was assigned. — On the other side it was contended, that if an apprentice resides in a parish by the consent either of his master, or of the executor or administrator of the master, he gains a settlement. That here had been no dissolution of the apprenticeship by the act of the parties, and that no case went so far as to decide that an apprenticeship is of course dissolved by the death of the master. That it had only been decided that an apprentice could not be compelled to serve the master's representative. And several cases were cited; but that which was chiefly relied on was the case of *East Bridgeford*, as having gone much farther than this, because there the assignment was by a person who

had only the right to the administration, but had not administered.—By *L. Mansfield*: Tho' an apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties and his own, it is a continuation of the apprenticeship. The case of *East Bridgeford* is much stronger than this. *Douglas*, 69. *Cal. Cas.* 60.

M. 5 G. 2. Salford and Storeford. It was moved to quash an order of two justices confirmed at the sessions. The sessions state the case specially, that one *Lineacre* had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship in the parish of *Salford*; but that the indenture was not stamped. However, the justices judged this to be a good settlement by way of service, though not as an apprenticeship; and accordingly removed his wife and two daughters from the parish of *Storeford* to the parish of *Salford*. But the court held this to be no settlement, on the authority of *Cureden and Leiland* (a); and quashed the order. 2 *Barnardist.* 39.

Apprenticeship not good by indenture, shall not endure as a service.

T. 5 G. 3. Whitchurch Canonisrum and Wotton Fitzpays. The pauper *John Gay*, being of the age of 22 years, agreed with a stone-mason that he should take the said *John Gay* apprentice for 6 years, to teach him the trade, and that the indentures should be executed accordingly. He went and served 5 years, when they parted by consent; but no indentures were ever executed. It was contended, that this was as good as a hiring and service. But by the court, Here is no hiring expressed or implied. The objects are different. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other. And the case of the *King* and *St. Mary Kallendar* in *Winchester* (b), was mentioned as in point, *Barrow's Settl. Cas.* 540.

H. 10 G. 3. Peterchurch and All Saints in Hereford. The pauper, *Abraham Lewis*, when a boy, together with his father, entered into an agreement in writing, not stamped, with *Mrs. Tringham* of *All Saints*, reciting, that "whereas the boy, with the consent of his father, is to be bound apprentice to her for seven years," she agrees to pay the boy 25 s. the first year, the four following years 50 s. each, the sixth year 3 l. and the seventh year 4 l. He served her two years, and received the money agreed on for the said time; then left his mistress: and no indenture of apprenticeship was ever executed. It was argued, that the pauper in this case was to be considered as a servant. Every thing here stated was service. Nothing was to be learned. And he was paid wages by his mistress.

(a) *Ante*, this same title,

(b) *Ante*, this same title,

He was hired for seven years; and served two of them; and received the money for that time, according to the agreement.—But by the court: An *apprenticeship* was certainly the thing in view. But no indenture was executed; nor could the agreement be esteemed to supply the want of it, as it was not stamped. Nor can it be considered in the nature of a *service*: For in that case there must be a hiring for a year, and a service for a year under such hiring. And the binding as an apprentice cannot be converted into the hiring as a servant. *Burr. Settl. Cas.* 656.

But if the agreement is not so nomine as an apprentice, it is to be considered as a hiring and service.

M. 24 G. 3. K. v. Little Bolton. John Wyld and his wife and six children were removed from *Great Bolton* to *Little Bolton* in *Lancashire*. The sessions confirmed the order, and stated the following case: That the pauper being settled in *Little Bolton*, and being unmarried, and having no child, went into *Great Bolton*, where one *Stott* a weaver lived, and asked *Stott* if he would teach him to weave counterpanes: *Stott* said he would, if he would work with him $2\frac{1}{2}$ or 3 years; and the pauper's earnings were to be divided between them: the pauper was to find himself with meat, drink, washing, and cloaths: he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper worked with his master under this agreement in *Great Bolton* about a year and a half, and then gave his master 20 s. to be free, having then married: he then worked journey-work with the same master near a year: the master (whilst he was working under the agreement) found him looms, loom room, and materials; he never employed the pauper in any work but weaving: the condition upon which he taught the pauper to weave was one half of his earnings. *Stott* received the money and paid the pauper one half, and looked on it that he had a right to receive it, but sometimes he let the pauper receive it. The agreement in writing was proved to be lost, and therefore parol evidence was allowed to be given of it.—*Cockell* shewed cause in support of these orders, and *Lee* Attorney General and Sir T. Davenport contra.—*L. Mansfield*: This is not a hiring and service. If an indenture were not made necessary, there could be no doubt as to its being an apprenticeship, for the pauper is to be taught, and pays a consideration for it, and is to do no other work: but if these agreements were allowed to give settlements, there would be an end of indentures of apprenticeship, and also of the revenue derived from thence.—*Buller J.* I should have been better satisfied if the cases had gone the other way; because when a man engages to work for another

ther he hires himself to such an one : but the cases seem to have taken another turn, and if they have settled it, I adhere to the authorities. The rule was accordingly then discharged, and both the orders affirmed.—But presently *Willes* J. observed, that *Ferrison's* case cited by *Mr. Cockell* did not apply.—*Buller* J. That was the case of an agreement between a master and a third person, a tradesman, that he should teach his trade to the master's servant ; the servant himself being no party. And the court said they would look into the cases. Afterwards *L. Mansfield* delivered the judgment of the court. We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, speak of the pauper as an apprentice, and that he was to serve as such. There is no such statement here ; and we are therefore of opinion that it is a good hiring and service. Rule absolute ; and both orders quashed. *Cald. Cas.* 367.

But in the case of *K. v. Higham*, *H. 25 G. 3.* where the written agreement did not in terms state an apprenticeship ; yet, as the contract was proved to have been entered into with a view to an apprenticeship and in fraud of the revenue, the court held that contract was not convertible, and could not be considered as a hiring, and as entitling to a settlement. *id.*

But if entered into with a view to an apprenticeship, it is otherwise.

T. 13 & 14 G. 2. East Knoyle and Toffont Magna. Two justices make an order to remove *Anne Bowles*, wife of *James Bowles* (who had run away and left her), from *Toffont Magna* to *East Knoyle*. Upon appeal, the sessions confirm that order, and state the case thus : It appearing to this court, upon the evidence now given, that the said *James Bowles* was bound an apprentice by indenture, to one *William Wilkins* of the parish of *East Knoyle*, and that he served three years at *East Knoyle* aforesaid under the said apprenticeship ; at which time the said *William Wilkins* the master died ; and that the sum of 5*l.* being the full consideration money, was paid by his father with the said apprentice for such his binding : But the indentures of apprenticeship were not produced ; neither did it appear to this court whether the duty of 6*d.* in the pound directed to be paid by the statute of the 8 *An. c. 9.* was paid, or whether the said indentures were stamped as the said statute requires.—It was objected, That the justices had admitted evidence that was not legal : That they admitted parol evidence of an indenture, which they state not to have been produced, and have not given any reason why it was not produced, nor did it appear to them

Indenture not produced, how far parol evidence shall be admitted.

Door. (Settlement by apprenticeship.)

that the duty was paid, or whether the indentures were stamped as aforesaid. But Mr. J. *Page*, and Mr. J. *Chapple* (the only two justices that were in court), overruled the objection, and refused to make a rule to shew cause. For it is stated, that it appeared to them that he was bound by indenture, perhaps the indenture was lost. Nor do they say that the duty was not paid, or that the indenture was not stamped. *Burr. Settl. Cas.* 151.

T. 22 & 23 G. 2. St. Helen's Abingdon and St. Saviour's Southwark. Two justices made an order to remove *Anne Hutt*, wife of *Joseph Hutt* (who had absconded for 6 months), from *St. Saviour's* to *St. Helen's*. And the sessions upon appeal confirm that order, and state parol evidence produced before them of an indenture of apprenticeship (not produced) of *Joseph Hutt* the father to *William Hutt* the grandfather. Upon the whole of which, it appeared that the indenture was not produced, and probably (even to very strong presumption) was never stamped. It was moved to quash these orders, for that there is only parol evidence of an indenture, which ought itself to have been produced; and it doth not appear to have been stamped. And by the court: There is not enough stated to shew, that this is a binding within the act. And the orders were quashed. *Burr. Settl. Cas.* 292. 735.

Indeed parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the court; as, that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

Indenture produced, but no subscribing witnesses thereto.

T. 27 G. 3. Middlezoy and Sudbury. *Henry Musgrave* and his wife and children were removed from *Middlezoy* to *Sudbury*. The sessions quashed the order, and stated the following case: That the appellants proved a hiring and service of the pauper for a year in *Middlezoy*; the respondents proposed to shew that a settlement could not be gained thereby by reason of subsisting indentures of the pauper's apprenticeship to one *Warren* of *Sudbury* at the

13...

time

time of such hiring and service: They had given notice to the appellants to produce the said indentures, and an indenture was accordingly produced in court by the appellants with proper seals and signatures, but no subscribing witnesses thereto; and no evidence was adduced by the respondents to prove the sealing and delivery thereof; whereupon it was contended by the appellants, that the same could not be given in evidence without proving the execution thereof; to which it was answered, that coming from the hands of the appellants, it ought to be received in evidence against the party producing it without proof of the execution. The sessions being of opinion that proof ought to be given of the due execution thereof, refused to admit the same in evidence without such proof. The respondents then produced the counterpart, which they proved to be duly executed, and tendered the same in evidence, but the court also refused to admit the said counterpart. The pauper served the said *Warren* in *Sudbury* subsequent to the date of the said indentures; and afterwards before the term thereof expired, without any consent of *Warren*, served for a year as aforesaid in *Middlezoy*, under a hiring to one *Wilcox*.—By the court: The sessions have done wrong in refusing to admit this evidence; because as the indentures came out of the hands of the appellants, they were concluded from saying they were not properly executed. In civil actions, where a plaintiff wishes to give in evidence a deed in the defendant's custody, he gives him notice to produce it; and the deed, when produced, must *prima facie* be taken to be duly executed, because the plaintiff not knowing who are the subscribing witnesses, cannot come prepared at the trial to prove the execution of the deed. But in this case it appears, that if the appellants had not produced the indentures at all, the counterpart must have been admitted in evidence, which would have been sufficient.—Order of sessions quashed. *Cas. by Durnf. and East, 2 V. 41.*

vi. Of settlement by service.

In like manner as under the last head, I will first set down the whole law relating to the subject before us, and then the adjudged cases upon the several branches thereof.

By the 13 & 14 C. 2. c. 12. On complaint by the
churchwardens or overseers, within 40 days after any person Statutes con-
shall cerning settle-
ment by service.
 E c 3

Poor, (Settlement by service.)

shall come to settle in any tenement under 10 l. a year, two justices (1 Q.) may remove him to the place where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at the least.

But by the 1 J. 2. c. 17. The forty days continuance shall not make a settlement, but from the time of delivering notice in writing.

And by the 3 W. c. 11. From the publication of such notice in the church.

But by another clause in the said act of the 3 W. If any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, tho' no such notice in writing be delivered and published.

And by the 8 & 9 W. c. 30. Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, it is enacted and declared, that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

By the 12 An. st. 1. c. 18. If any person after June 24, 1713, shall be a hired servant with any person, who did come into, or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place; such servant shall not gain any settlement in such parish, township, or place, by reason of such hiring or service, but shall have his settlement as if he had not been an hired servant to such person. s. 2.

And by the 9 & 10 W. c. 11. No person who shall come into any parish by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement in such parish, unless he shall bona fide take a lease of a tenement of 10 l. a year, or shall execute an annual office in such parish (and consequently shall gain no settlement by service).

General exposition of hiring and service.

On complaint within 40 days] By the statute of C. 2. persons became settled, if not removed, in 40 days. But whereas people came privately into parishes, and continued perhaps 40 days before they were publickly known to be there; therefore the statute of the 1 J. 2. did provide, that such 40 days should not gain a settlement, but after the time of delivering notice in writing, to the overseers, that such person was come to inhabit in such parish. And whereas in that case, the overseer to whom such notice

notice should be delivered, either through ignorance or wilfulness, might conceal such notice from the inhabitants; therefore the 3 *W.* did provide, that such 40 days should be accounted from the time of the publication of such notice in the church, and not otherwise. But then by the subsequent clause of the statute of the 3 *W.* it is enacted, that *if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published.* And the reason thereof is this, because that such notice would not avail; for that the justices upon complaint of the overseers, who are no parties to the contract, cannot make void the contract between the master and servant, by which the servant is bound to continue with his master, if he requires it. And therefore upon this act, if the servant was hired for a year, and served forty days under that hiring, he was not removable, and gained a settlement; and so in every place where he served forty days under such hiring, he there gained a settlement; and where he served the last forty days, there was his last settlement. But this easy method of acquiring settlements, causing servants to become insolent, at last the statute of 8 & 9 *W.* was made, which enacteth, *that no such person so lawfully hired into any parish or township shall be adjudged to have a good settlement there, unless he shall continue in the same service during the space of one whole year.* But if he shall continue in such service during the space of one whole year, his settlement in all other respects shall be as before; that is to say, every continuance of forty days unremovable during such service for the year shall be deemed a settlement; and where he continues the last forty days, there is his last settlement. But there hath been much doubting, what shall be deemed a hiring for a year, and also what shall be deemed a service for a year, within the sense of these statutes; and what relation such hiring and service shall bear to each other: The arguments for and against which on each side, in the adjudged cases hereafter following, will be the better understood, from this short historical account which hath been given, of the progress of the law relating to this matter.

Forty days.] Less than forty days residence in any parish will not gain a settlement. As in the case of *Goring and Moleworth*, E. 4 G. 2. A person was hired for a year, and served the year. His master lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the

Forty days residence necessary to a settlement.

servant was not forty days in the whole year at the parish of *Goring*, but served out the year on board the boat. By the court: This was no settlement at *Goring*. *Sess. C. 327. Casl. of Settl. 219. 1 Barnardist. 436.*

Not necessary that the forty days be all together.

But it is not necessary that the servant reside forty days together without interruption. As in the case of *Greenwich and Longdon, M. 18 G. 2. George Wall* was hired for a year and served a year, as a livery servant, at 7l. wages, to one captain *Saunderson*, commander of the *William and Mary* yacht, who had an house and family at *Greenwich*, and resided there when not absent on the king's service. His master made frequent voyages to and from *Holland*, and he always attended him in the same; and he was never forty days together at *Greenwich*, but during his service, he was there forty days at different times. By the court: It need not be forty days all together; it is sufficient if within the year he reside forty days in the whole. *Burr. Settl. Casl. 243.*

When the last forty days service is in different parishes, the settlement is where the servant lodges the last night.

E. 16 G. 3. Lowess and Lanstephan. The pauper was hired for a year to *John Williams* of *Lanstephan*, where his master occupied his own estate. He continued there with his master in *Lanstephan* till some time before *St. Peter's-tide*, when his master and family removed to *Lowess*, in which parish his master rented another farm. He continued with his master in *Lowess* till the 16th of *January* following; when his master and family removed to *Lanstephan*, and his master afterwards constantly resided there. But the pauper was sent back by his master to *Lowess*, to thresh the corn and look after his master's cattle. The pauper staid in *Lowess* two or three nights and days, and eat and lodged there; and then returned again to *Lanstephan* in like manner as aforesaid; and so continued between the said parishes to the end of his year, which was the 17th of *May* following. The pauper never continued forty days together in either of the two parishes after the said 16th of *January*, but lived and resided as aforesaid more than forty days in the whole, in each. He verily believed, he resided most at the latter part of his service in *Lanstephan*, and lodged there the last night; and went from thence in the morning to *Lowess*, and took some cattle of his master's from thence to the Hay-fair, where he finished his service. The court held him to be last legally settled in *Lanstephan*. *Bur. Settl. Casl. 825.*

And in like sort was determined the case of *Holland and Bradley, E. 21 G. 3.* namely, that when a person has resided part of the year in one parish, and part in another, at different times and intervals, making, when added together,

ther, more than forty days in each, his settlement is in the parish where he lodged the last night. *Douglas*, 633. *Cal. Caf.* 118.

Also in the case of *K. v. Iveson*, E. 23 G. 3. *James English* and his wife were removed from *Newburn* to *Iveson*. The sessions confirmed the order, and stated specially, That the pauper being unmarried was hired for a year to serve as a collier. That *Iveson* and *Kyo* are two separate townships in the parish of *Lancheston*, and maintain their poor separately. That he resided at *Kyo* from *Martinmas*, when he was so hired, till the *May-day* following, when he married; that about fourteen days after his marriage, he took a cottage in *Iveson*, and without the privity of his master removed thither from *Kyo* with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service, and then they returned to *Kyo*. The court were of opinion that this case was similar in principle to the last case of *Hulland*, and precisely that of *Lowe's* above, and that they ought to be adhered to. Both orders quashed. *Cald. Caf.* 288.

And in the case of *K. v. Great Bookham*, T. 26 G. 3. The same point came in question, but was given up, being considered as fully settled. *Cald. Caf.* 290.

Two justices (1 Q.) may remove him] But it hath been observed before, that the justices, upon the complaint of the parish officers, cannot remove the servant from his master; because they cannot upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid servant shall happen to be with child, which child is likely to be born a bastard; yet if her master is willing to keep her, the parish cannot remove her; but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice (if he sees cause) may discharge her, and then the parish by order of two justices may remove her.

But the general power of discharging servants by justices with regard to other servants than those in husbandry, seems to have been doubted in the following case: viz.

H. 17 G. 3. *Ashover* and *Brampton*. Two justices removed *Hannah Wright* from *Ashover* to *Brampton*. The sessions confirmed the order, and stated the following case: That the pauper being settled at *Brampton*, hired herself to one Mr. *Langsdon* of *Eyam* for a year, and served till within three weeks of the end of the year, when her master discovering her to be with child, turned her away, and paid her

Whether the servant may be removed from the master.

A maid servant may be discharged by her master for being with child, and may then be removed.

her year's wages, and half a crown over; whereupon she went to her father's at *Ashover*, from whence she was removed as above stated. Upon her examination in court, she said, she was willing to have stayed her year out if she might, but that it was not material to her, as she had received her whole year's wages, and not being half gone with child, she hoped she could have done her work to the end of the year. *Dunning* and *Balguy* in support of these orders argued, that a master upon just and reasonable cause may discharge his servant, and that a criminal conduct like this amounts to a reasonable cause: Though it has been said in *K. v. Marlborough, Viner's Ab.* "That a maid servant got with child can't be removed from her service." This can only mean removed by the parish officers before the contract is dissolved; but this misconduct is a good reason for a master to dissolve it, and there can then be no objection to her being removed. It has been said, that there ought to have been an application to a magistrate to discharge her; but this is not the case of a servant in husbandry, and therefore a justice has no jurisdiction to discharge, or if he had, it was in this case unnecessary as she consented; that the full payment of her wages did not prove the contract continued; and *K. v. Castlechurch (a)*, and *K. v. Godalming*, were cited as fully in point as to the fact found, "that she hoped she could have done her work." It is not her ability, but her criminal conduct, that must be the test, otherwise a master might be obliged to keep a woman in his house many months under those circumstances. *Wallace* and *Wills*, to quash the order, contended, that the statute of 5 *Eliz. c. 4.* extends to maid servants, and therefore at least the intervention of a magistrate was necessary; without it the contract could not be dissolved, nor is there any authority to support a contrary doctrine: But a magistrate in this case could not interfere, it not being the case of a servant in husbandry; neither is there a *dictum* to support the doctrine, that a magistrate can interfere in such a case with respect to any servant; except the marginal note in *Viner* cited from *Shaw*, and that was but a loose observation unsupported by any authority; that on the contrary, the case itself in *Viner* was expressly in point; that there was no pretence for the construction suggested on the other side, that the court must mean *cannot be removed till after the contract is dissolved by a discharge*; that the case affords nothing on which such a conjecture can be founded, but on

(a) *Post*, this same title.

the contrary says, "*shall not for that be removed, but shall serve out her time: And since she is not removeable, &c.*" so as to leave no solid foundation to support the sense contended for. And where the dismissal of a servant is accompanied with the payment of the whole wages, it shall be considered as a dispensation of the remaining service. They denied the consent of the pauper to dissolve the contract, and insisted the half crown paid over was to be considered for her board; and that the only object of her master was to defeat the settlement. And the case of *K. v. Hanbury (a)* was cited to shew that the master had not any authority by law vested in him to discharge his servant in such case; for that an unmarried woman by being with child is not guilty of any crime, or even misdemeanour at common law; that all misdemeanours are indictable, which this is not; that though it may be an offence cognizable in the ecclesiastical courts, yet it is not so in the temporal courts, unless the child becomes chargeable; that the pauper was willing to stay, and the whole wages were paid.——*L. Mansfield*: The statute of 8 & 9 W. 3. c. 30. is an explanatory law, and must not be carried beyond the words by construction. It declares that there must be a hiring for a year, and a continuance for a year in that service to gain a settlement: With respect to the hiring, in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as whether the absence was *with leave*, from *sickness*, &c. But these questions have always been brought to this point, *whether the contract was put an end to within the year?* This cannot be done by dismissal of the servant without good and sufficient cause. In the *K. v. Castlechurch* there was a discontinuance by agreement, and the contract therefore determined; in such case the payment of the full wages, which might be mere benevolence, could make no difference. The question then is, *Is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong*. The marginal note cited from *Viner*, whatever degree of authority it may be entitled to, is well warranted in principle. If the master agrees to the contract's going on, the overseers, it is true, shall not take her away because she is with child; but shall the master therefore be bound to keep her in his

(a) *Peß*, this same title.

house? To do so would be *contra bonos mores*, and in a family where there are young persons, both scandalous and dangerous: Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shews the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismissal of his servant under a criminal charge, shall never be done away by an implication arising from the payment of the whole wages. *Willes J.* This case differs from that of *K. v. Richmond (a)*, nor is it like that of *K. v. Slip in Stra.* 423. (b) where the cause of the discharge was not reasonable. Here if the master had daughters it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate; the jurisdiction of the justices being confined to cases in *husbandry*. *Asbhurst J.* agreed — Both orders affirmed. *Cal. Caf.* 11.

Observations on
the above deter-
mination.

[Upon which Mr. *Caldecott* observes: " That whether
" the jurisdiction of justices extends to servants in general,
" or is confined to servants in husbandry; or whether
" masters in general may on reasonable cause, by their
" own authority, discharge their servants, does not seem
" to be fully and absolutely settled; both points at least
" were questioned in this cause: All that seems esta-
" blished is, that a master may, without the inter-
" vention of a magistrate, dismiss his servant for *moral*
" *turpitude*; but whether he may or not for any other
" misconduct or general misbehaviour, though there are
" authorities to shew that he cannot, does not seem to be
" fully settled. In the case of *Temple v. Prescott*: A wet
" nurse retained for a year, was discharged by her mis-
" tress for insolence and being subject to passion, and was
" offered her wages as far as she had served, which was
" refused, and an action brought for the whole year's
" wages: It was insisted on, that these circumstances
" amounted to a reasonable cause to discharge her, and
" that it was usual for masters so to do. — But by *L.*
" *Mansfield*, ' No person can be judge in his own cause,
" and this first principle could not be meant to be over-
" turned by any law or usage whatever; ' and the servant
" had a verdict for her whole year's wages."

(a) *Post*, this same title.

(b) *Post*, this same title.

But

But although regularly the servant cannot be removed from the master, yet the master may be removed from the servant; as if the servant hath gained a settlement in the parish, and the master hath gained none, which may often happen, the settlement of the servant no way depending upon the settlement of the master; in such case, if the parish will remove the master, they cannot remove the servant; but the master may complain to the justices, who may compel the servant to go along with him.]

If any unmarried person not having a child or children] *E. 10 An. Antony and Cardigan.* A person having a daughter, which daughter was married and settled elsewhere, hired himself for a year, and served the year. By the court: He is a single person within the meaning of the act, though not expressly within the letter of it. The meaning of the statute was, that he might not bring any consequential damage to the parish, which he cannot possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Cases of S. 7. Foley, 131.* Unmarried person, hiring.

E. 1 An. Farrington and Witty. A servant hired for a year, served half a year of the time, and married. The question was, Whether the justices, on complaint of the overseers, could make an order to remove him to the place of his last legal settlement? By the court: The contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved. And the marriage doth not hinder the service; the contract continues; and if the man performs his service, he gains a settlement. *2 Salk. 327.*

The same resolved, *M. 1 G. 2. K. and Sutton. 2 Sess. C. 121.*

T. 27 G. 2. Hanbury and Tardbigg. The pauper was hired for a year at *Hanbury*; served three quarters of the year; then married; whereupon his master took him before a justice, who allowed the master to discharge him for marrying within the year, but made no order in writing. The question upon this was, Whether the servant was properly discharged within the statute of the *5 El. c. 4. s. 5.* By *Lee Ch. J.* and the court: Here is no act of jurisdiction in the justice, having made no order in writing. Though the master might dispense with the service by parol, a justice of the peace cannot, who hath his jurisdiction by statute, and every thing he does in pursuance

fuance of it must be by order, and that is examinable in the court of king's bench. Therefore the court held, this was no discharge of the service. And they said that the justice can only, by the said statute, discharge for *reasonable* cause; and that marriage itself, as such, is not a reasonable cause; the same being no offence, nor inconvenience to the public. *Bur. Settl. Cas. 322.*

E. 31 G. 2. Bank Newton and Marton. George Ayrton the pauper, and his wife, being legally settled at *Bank Newton*; he the said *George Ayrton*, on the 16th of *February* 1738, agreed with *John Wilcock*, son of *Henry Wilcock* of *Marton*, by order and on behalf of his said father, to serve the said *Henry Wilcock*, for a year from the 24th of the same month of *February* (when his father's then servant was to go away), at 5 guineas wages, in case the said *Henry Wilcock* should approve the said terms. On the 18th of the said *February*, the wife of the said *George Ayrton* died without issue. On the 24th of the same month, the said *George Ayrton* went to *Henry Wilcock*, and *Henry* asked him, upon what terms his son and he the said *George* had agreed? Which terms he the said *George* repeated, as above. Whereupon, he the said *Henry Wilcock* said, that he did agree to the said terms: And the said *George Ayrton* did then enter upon, and continue in the said service for a year. It was objected, that this man was not an unmarried person at the time of the hiring, to wit, on the 16th of *February*.—Unto which it was answered, that the contract was not complete, but a mere nullity, till the assent of the principal (the father), which was on the 24th. For he had it in his power to disapprove. It was not binding, till his assent was given. For the agent only acted under a limited authority. And when the principal did assent, the servant was unmarried.—And by the court, it is clear, that the hiring was on the 24th. For the father might have dissented from the conditional agreement made by his son on the 16th. And, consequently, they held, that this hiring and service did gain a settlement at *Marton*, where the service was performed. *Bur. Settl. Cas. 455.*

T. 29 G. 3. K. v. Allendale. John Drisdale and his wife were removed from *Lambley* to *Allendale*, both in *Northumberland*. The sessions confirmed the order, subject to the opinion of the court on the following case: In *February* 1786, the pauper being then an unmarried man, not having child or children, was hired for a year to serve *Thomas Benjon* at *Allendale*; from *May-day* 1786, to *May-day* 1787, as a hind. It is the custom in that country to hire married

ried men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and servant, and perfectly understood by them at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of the service, he married his wife, the other pauper, and entered upon his service a married man, and served out the whole year a married man at Allendale. — *Chambre*, in support of the order of sessions, was stopped by the court. — *Erskine contra (inter alia)* contended, that the time when the service commences, and not the time of the hiring, is the criterion by which the court is guided in determining whether or not the case comes within the statute. — By *L. Kenyon Ch. J.* The principle on which this question must be decided has been long settled. And he cited the above cases of *Farrington v. Witty*, and *Bank Newton v. Marton*, and said, that in those cases the court seemed to think, that the time to be attended to was the time when the contract was made, which has ever since been considered as the rule. — *Buller J.* said, That neither the custom of the country nor the agreement between the parties, went to compel this pauper to marry before he entered upon this service; he was at liberty to do so or not as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female; it is therefore indifferent to the master whether the servant be married or not, because if he be single, he must hire some female to perform those services. — Both orders affirmed. *Caf. by Durnf. and East, 3 V. 382.*

And in the same term, in the case of *K. v. Stannington*, the same point came in question, but in consequence of the above determination, was given up without argument. *Durnf. and East, 3 V. 385.*

Shall be lawfully hired into any parish or town for one year] Hiring for a year.
These words do introduce one great subject of debate, namely, What shall be deemed a sufficient hiring for a year within these statutes, by virtue whereof a person shall be intitled to gain a settlement? Concerning which it hath been resolved as follows:

M. 9 An. Dunsford and Ridgwick. A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued intire service, but by several hirings. By the court: It ought to be one intire contract and one intire service; the one is required by the statute,

as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, may, if he continues a year, gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year, it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. 2 *Salk.* 535.

M. 12 An. Horsham and Shipley. A person was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again in like manner for another year. The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley*, 134.

H. 11 G. 3. Great Salkeld and Louthber. Two justices removed *Catherine Nicholson* from *Great Salkeld* in *Cumberland* to *Louthber* in *Westmorland*: And the sessions confirm their order; subject to the opinion of the court of king's bench, on the following case: The pauper was hired to *William Thompson* of *Hackthorpe-hall* in the parish of *Louthber* from *Whitsuntide* to *Martinmas*; and again was hired to the said *Thompson*, at *Hackthorpe*, for the succeeding half-year from *Martinmas* to the *Whitsuntide* following; and in pursuance of those hirings served the said *William Thompson* at *Hackthorpe* aforesaid, for the complete year, without leaving her service; and received two half year's wages. It was further stated, that the usual custom of hiring servants in *Cumberland* is from half year to half year: That it hath been the invariable practice of the quarter sessions of *Cumberland*, as long as can be remembered, to adjudge that the said hiring for two successive half years, and service in pursuance thereof for one whole year, with the same person and in the same place, should be a settlement under the several acts of parliament made relating to the poor. — It was moved to quash these orders, as here was no hiring for a year. *Mr. Wallace* was to have shewed cause, on behalf of the parish of *Great Salkeld*; but he candidly acknowledged that the orders could not be supported, there being no hiring for a year. *Burr. Settl. Caf.* 674.

H. 24 G. 2. Wincaunton and Crediton. A boy of seventeen, born in *Wincaunton*, offered himself to serve *Samuel Williams* of *Charleton Horeborne*; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and cloaths when wanted; but no particular time was agreed on, and the pauper apprehended his master might have been off, or he might have gone

General hiring
implies hiring
for a year.

gone away from him, at their pleasure: Nevertheless there was no agreement for that purpose. The boy continued and served him in *Charleton Horethorne* two years and an half. By the court: He gained a settlement there, by this service. A general hiring is a hiring for a year. And here are no circumstances in this case to shew an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it. *Burr. Settl. Cas.* 299.

E. 33 G. 2. Handley and Berwick St. John's. The pauper, settled at *Handley*, happening to meet Mr. *Jones*, head keeper of *Rushmore Lodge* in the parish of *Berwick St. John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his servants or under-keepers, at the wages of 3l. a year and a keeper's livery, besides meat, drink, and lodging; the said Mr. *Jones* addressed the pauper thus, Do you like the life of a keeper? Which being answered in the affirmative, he said further, Then go into *Ned Hill's* place, and you shall want no encouragement. Accordingly he went, and continued in the service for three years, and received three years wages. The question was, Whether this conversation amounted to a hiring for a year, so as to gain a settlement? It was urged, that a hiring generally is hiring for a year, and that the law knows no other servant but one for a year; and that this has an express reference to *Hill's* service, which was for a year: On the contrary, it was argued, that here was no actual hiring at all; and none can arise, by implication, from the bare service alone; and that the reference to *Ned Hill's* service relates to *Hill's* work only, and not to his contract. By *L. Mansfield* and the court: This man served three years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he was hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for *Hill* was a hired servant. And therefore it was adjudged, that the pauper thereby gained a settlement. *Burr. Settl. Cas.* 502.

M. 14 G. 3. Basingstoke and Stockbridge. The pauper *Aaron Alexander* was hired to one *Michael Nicholas* of the parish of *Wanston*, to serve him as a bootketcher, and occasionally as a post-chaise driver, no term for which he was to serve being mentioned. He went accordingly into the service, and continued in it for one year; and was, during that time, found by his master in meat, drink, and lodging there, but received no wages for such service. He was afterwards hired to *John Watts* of *Basingstoke* to be a chaise driver.

driver, but no term was mentioned: He served him for a year there; being found by him in meat, drink, and lodging, but received no wages. He thought himself at liberty to leave either of these masters whenever he pleased. And several witnesses proved that the customary manner of engaging chaise drivers is as the pauper deposed, and that the masters and drivers think themselves at liberty to part whenever they please.—*L. Mansfield* was absent. The other three judges were of opinion, that this was a sufficient hiring for a year. A general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary. And nothing is here stated, which limits the hiring, or shews that it was meant to be for less than a year. *Bur. Sett. Cas. 759.*

M. 16 G. 3. Mangotsfield and Bath Easton. The pauper was hired to *John Giles* a barber in the parish of *St. John* in the town of *Devizes*, to serve him as a journeyman barber; who was to give him meat, drink, and lodging; but in lieu of wages, he was to have the *Christmas* boxes; but no time was stipulated during which he should serve. And upon these terms he lived with him for four years; but thought himself at liberty to leave his master when he thought proper. Afterwards he was hired to *John Bedford*, an innkeeper at *Mangotsfield*, to serve him in his stable; who was to find him meat, drink, washing, and lodging, but no wages, other than what he should receive as perquisites of the stable; and no time was stipulated during which he should serve: And he apprehended, that his master might have turned him off, or he might have gone away from him, at their pleasure. From the time that the pauper began to serve the said *John Bedford* to the time at which he left him, was sixteen years. During which time, he left the said *John Bedford* several times at his pleasure. But from the time of his first going into the service, he was with the said *John Bedford* two years and upwards without leaving him at all; and at the end of the said term of sixteen years, he was with him for three years together without interruption.—The counsel who were to have argued this to be no settlement at *Mangotsfield*, gave up the point as insupportable. *Bur. Set. Cas. 823.*

But must be a hiring for a year either in law, or express words.

M. 10 G. 3. Bedford and Deabam. The pauper *Samuel Bolton* was hired to *John Mason* of *Deabam*, to serve him in the business of a plumber and glazier, at the wages of six shillings a week, board, lodging, and washing, summer and winter. He served under that agreement for eleven months; when his master, having taken an apprentice, informed

informed him, that he must lodge out of his house. Upon which, the pauper demanded 6d. a week more; alledging, that he would otherwise quit the service. He continued to receive the additional 6d. a week till after the expiration of the year. And the pauper, by the aforesaid hiring, apprehended he was bound to stay with his master a year.—It was objected, that here is nothing stated that imports a contract for a year; and consequently, the pauper was not bound to serve a year, whatever he himself might apprehend concerning it.—Unto which it was answered, that a general hiring is a hiring for a year. The mention of 6s. a week is only to ascertain the rate of the wages, but doth not mean to consider the service as a weekly service; and as the wages in this trade are higher in winter than in summer, the words *summer and winter* shew that this was intended to be a continued contract for both those seasons; and that by fixing the wages to be the same in both, it was understood by both parties to be a contract for the whole year. But it is, at least, an indefinite contract; and an indefinite contract is a contract for a year.—By *L. Mansfield* and the court: There must be a hiring for a year; either in law, or in express words. The words do not express it: And here is a circumstance stated, which destroys the presumption of its being a general hiring for a year; namely, that the servant demanded an additional sixpence a week, alledging that he would otherwise quit the service; and the master's complying with this demand shews that neither of them at that time thought the contract originally made between them was binding for a year. *Bur. Set. Cas.* 653.

M. 16 G. 3. Cavendish and Clare. The pauper, being a journeyman miller, at *Michaelmas* 1768, let himself to *Elizabeth Stammers* of *Clare* by the month, at the wages of 8s. a month, and was at liberty to depart from his said service at a month's wages, or a month's warning. And at the time of hiring it was agreed between the pauper and the said *Elizabeth Stammers*, that if he continued in her service till harvest time, he should be at liberty, during the harvest month, to let himself to any other person for the harvest month. He continued five years in the service of the said *Elizabeth Stammers*, and during that time constantly let himself to some person or other for the harvest, and received the common wages of 8s. from his said mistress for the harvest month in each year; and paid her one moiety of the wages earned at such harvest, annually, and during his service with his said mistress; but generally, at the end of every month, and sometimes weekly, received his wages

of 8 s. a month, or in that proportion. And he considered himself as a monthly servant, and at liberty to leave his mistress at the end of any month, on payment of a month's wages, or giving a month's warning, according to the first agreement. This point was given up by the counsel as indefensible; the said hiring being only a hiring by the month. *Bur. Set. Cas.* 819.

E. 28 G. 3. K. v. Newton Toney. William Slater and his wife and children were removed from *Harbridge* to *Newton Toney*. The sessions confirmed the order, and stated the following case:—That Slater went into the parish of *Newton Toney*, to one *Poslans*, a publican there, who had before employed him three times to go into *Shropshire* with some hounds; and on his return from the last journey, he agreed to live with *Poslans* as ostler, at 4 s. 6 d. *per week*, and continued with him as ostler for one year and a half, and then went away. Before his departure, on demanding his wages, *Poslans* alledged, that as he had received vails, 4 s. 6 d. a week would be too much; whereupon he agreed to accept after the rate of 10 l. a year, in lieu of 4 s. 6 d. *per week*. He then left his service, and lived elsewhere for five or six months, when he returned to *Newton Toney*, and agreed with *Poslans* to serve him again as his ostler, as he had done before, at 4 s. *per week*, which was about 10 l. a year, and which he received when he asked for it: under the latter agreement he lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time.—*Burrough* contended, that the first hiring in *Newton Toney* was a general hiring, and as the pauper served more than a year under it, he therefore gained a settlement.—*Marshall*, Serj. and *Porter*, *contra*, were stopped by the court. *Ashhurst J.* The case of *K. v. Dedbam*, above, is much stronger than this. It is impossible to distinguish the two cases upon principle: here the pauper hired himself as an ostler at 4 s. 6 d. *per week*, but that cannot be considered as a general hiring; and if either party had chosen to dissolve the contract before the end of the year, no action could have been maintained by the other. *Buller J.* This case is not so strong as that of *K. v. Dedbam*, for there the expression *summer and winter* shewed that the party had it in contemplation to continue a year in the service. Here the hiring is merely at so much *per week*: now if there be any thing in the contract to show that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected,

collected, it must be taken to be only a weekly hiring, and this hiring is of that kind.—*Grose J.* Considering the situation of the pauper, and what passed at the time of entering into this contract, this appears not to be a hiring for a year: the pauper was hired in the character of an ostler at 4 s. 6 d. *per week*; now that circumstance alone shews that he was not likely to continue a year. Besides that, it appears that he actually left his service in the middle of the year, which satisfies me that it was not intended by the parties to be a hiring for a year. Rule absolute. *Caf. by Durnf. and East, 2 V. 453.*

T. 28 G. 3. K. v. Odibam. The pauper went to live with one *Rhodes*, of *St. Mary, Lambeth*, livery stable-keeper, and post-chaise letter, as under ostler at 9 s. *per week*, without fixing any time for the expiration of such service. Some time after he had been there, a post boy went away, and the pauper was by his master turned over to take his place at 3 s. *per week*, and the money he could get from the persons he drove. He remained in such service upwards of two years, and more than one in the last employment as post boy; during the whole time he found himself victuals, and lodged in a loft belonging to his master in the yard. Some time after he left the said service he returned to it again, when *Rhodes* told him he might go to work, and then remained one year under that agreement. Some time after he left the service, he returned to it a third time, in or about *February*, as an odd man, without wages, and continued under this last agreement till three weeks after *Christmas*. When he first went, he saw, and had some conversation with the head ostler, and was some days about the yard before he entered into any service; he then asked his master *Rhodes* for his place, who told him he might have it. The pauper and his wife were removed from *Odibam* to *Lambeth*, which the sessions quashed on appeal. A rule was obtained to shew cause why the order of sessions should not be quashed. But it was given up as having been determined in the above case of *K. v. Newton Toney. Per curiam*, rule discharged. *Caf. by Durnf. and East, 2 V. 622.*

M. 25 G. 2. Ilam and Tutbury. *Rowe Port* of the parish of *Ilam*, esquire, hearing that the pauper was a likely boy to serve him as his postilion, sent to the pauper's father to have him upon liking. After the pauper had served *Mr. Port* eight weeks on liking, *Mr. Port* hired him for a year to commence from the beginning of the said eight weeks. He served *Mr. Port* in the said parish of *Ilam* a year (including the eight weeks) and ten days and no

Hiring for a year, part of which was then past, gains no settlement.

longer. By *Lee Ch. J.* This case differs from all the former cases. In *Lidney and Stroude* (a), the first hiring was conditional, for a quarter of a year upon liking; and if they did like each other, then to continue for a year: Yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *New Windsor and Chipping Wycombe* (b), it was uncertain till the end of the year, whether the hiring would be for a year, yet happening so in event, it was held good. In the present case, the commencement of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past. Mr. J. Foster thought the cases of *Lidney and Stroude*, and of *Chipping Wycombe and New Windsor*, had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: But both these were hirings for a year, previous to the service; and the conditions were performed. He observed also, that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties. And the court were of opinion, that the pauper by virtue of this hiring gained no settlement in *Ilam*. *Burr. Settl. Cas.* 304.

E. 17 G. 3. Cheshunt and Hoddjdon. Case specially stated, That *Anne Hickley* went to one Mr. *Year's* at *Hoddesdon* to enquire for a place, where she continued for about three weeks on liking, without any terms being talked of, when her aunt came and let her for a year for 4 l. to commence from the day she first came into the service; under which hiring she served a year, including the three weeks, and received her whole year's wages, that till her aunt came, no agreement of any sort was made, and that she thought herself at liberty to go to any other place, if one had offered.—*Wallace* was to have shewed cause in support of this hiring, but acknowledged, that after the above case of *K. v. Ilam* he could not maintain that a retrospective hiring was good. *Cal. Cas.* 23.

Also in the case of *K. v. Marton*, *E. 31 G. 3. Ralph Dowhurst* and his wife and children were removed from *Marton* to *Singleton*. The sessions discharged the order, subject to the opinion of the court on the following case:—It was admitted that the pauper's original settlement was in *Singleton*. When he was about 18 or 19 years of age,

(a) *Post*, this same title.(b) *Post*, this same title.

he went into the service of *W. Fisher* in *Marton*, and stayed about a fortnight or three weeks without any hiring, or agreement of any kind being made between them. The pauper's father then made an agreement with *Fisher* for the pauper to serve him for a year at 2 s. 6 d. per week. The time he had then served was to make a part of, and be reckoned in the year. He stayed in *Fisher's* service upwards of 15 months from his first coming, and received his wages according to the above agreement.—A rule having been obtained to shew cause why the order of sessions should not be quashed; *Beacroft*, who was to have shewn cause, admitted, that the order of sessions could not be supported, because (by the above cases) a retrospective hiring was not sufficient.—Rule absolute.—Order of sessions quashed. *Durnf. and East*, 4 V. 257.

T. 3 G. Ranton and Haughton. Order specially stated: *John Evans* was hired with *Ralph Trubshaw* of *Haughton* from *Ash-Wednesday* till *Christmas*, and served him that time. Then he went away from him, and staid with his father in *Ranton*, for about a week. Then he returned to the said *Trubshaw*, and was again hired with him for 11 months, and served him the said 11 months. Then departed from the said *Trubshaw*, and took his cloaths with him, and was absent one week. Then he returned to the said *Trubshaw*, and was hired with him for 11 months, and accordingly served him; and then left that service, and went to his father in *Ranton*, and staid about one week. Then the said *John Evans* served one *John Sutton* of *Haughton* aforesaid for about three weeks; then returned to *Ranton* aforesaid, and staid for about a week: And then returned to the said *John Sutton*, and hired with him for 11 months, and served within a fortnight or three weeks of the last 11 months; where, by agreement with the said *Sutton*, to avoid a settlement in the parish of *Haughton* aforesaid, he left him, took his cloaths, and went into the parish of *Gnosall*, and there continued about a week; then returned to the said *Sutton*, and continued with him so long as to make up his service of the last 11 months; and three weeks before *Christmas*, the said *John Evans* hired himself again to the said *Sutton*, for another 11 months, and served him from that time till within three weeks of *Michaelmas* following, and then came away and married. The question was, Whether these several hirings were sufficient to gain a settlement in the parish of *Haughton*? *Parker Ch. J.* said, this was an apparent fraud, and different from all the other cases. *Pratt J.* said, I doubt we

Hiring for eleven months, gains no settlement.

must take the law to be, that there must be a hiring for a year, and a service for a year: Here the sessions have found it specially, and there is neither hiring nor service for a year: And suppose a man that lives in a parish incumbered with poor, hires a servant for 11 months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there is any, the justices of the peace are judges of that. *Eyre J.* was of the same opinion of *Pratt J.* (*Powis J.* being absent). Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement: and though such hirings as in this case do defeat settlements, yet if that is a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands. *Fol.* 137. *Str.* 83. 10 *Mod.* 302.

Hiring for 11 months and 10 give one month over, gains a settlement.

T. 30 & 31 G. 2. Milwich and Creyton. *Thomas Thacker* was hired at *Milwich* for 11 months for 4 l. 10 s.; and it was agreed between him and the master, that he should give in a month's service, beyond the 11 months. He served the 11 months, and also the given-in month, except the last three days, and he could not say whether he served them or not; but he received the whole 4 l. 10 s. wages. It was moved to quash these orders; because this was not a hiring for a year, being only for 11 months; nor a service for a year, because three days are wanting at the end of it. But the court were very clear, that this agreement is a manifest contract to serve for a year, notwithstanding the form of expression (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion). The real question is no more than whether 11 and one make 12. There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is, to serve 12 months, for 4 l. 10 s. And what signifies the variation of expression? Every contract to serve, is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have laid for the wages, till the end of the whole 12 months. And as to the servant's going away three days before the end of the year, the state of the fact doth not support the objection. He could not say whether he did or not. But he received the whole 4 l. 10 s. wages; which at least seems

to imply the master's consent or permission. *Bur. Sett! Cas.* 433.

H. 29 G. 3. K. v. Macclesfield. George Dean and his wife, and John, William, Sarah, and Mary, their children, were removed from Macclesfield to Wildboarclough, both in *Cheshire*. On appeal the sessions vacated so much of the order as related to the settlement of all the paupers except John, subject to the opinion of the court, on the following case:—That the pauper George Dean being settled in *Wildboarclough*, was hired by Francis Berwick, late of Macclesfield, button-maker, for 11 months at 10 guineas wages: At the end thereof, he and his master settled his wages for 11 months, and his master gave him half a guinea over, saying, that he had been a good servant, and added, “*You may as well stay on an end in your place; the place suits you, and you suit the place.*” The pauper's answer was, “*Very well, sir, I have no objection.*” And he continued to follow his master's business near three years. The pauper being at *Birmingham* with his master's cart, was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service, but the pauper kept no account himself. A few days after his return from *Birmingham*, his master settled with him, he did not know in what manner, but supposed the money was right, and thought his wages would come to about 4s. a week. It did not appear that the pauper, or any of his children (except John), had gained any settlement in any other place.—By *L. Kenyon Ch. J.* It is clear, that there must either be an express or an implied contract for a year, in order to give the servant a settlement. An express hiring for 11 months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though 11 months only were expressed, as in the above case of *K. v. Mithwich*, where there was an hiring for 11 months, with an agreement to give in another month's service. Now in this case the first hiring for 11 months was not sufficient to confer a settlement; but when that time was elapsed, the master told the pauper that he might *as well stay on an end*; which, in that part of the country, means an indefinite time. This second hiring therefore must be considered as a general hiring, which the law construes to be an hiring for a year. As to this expression referring to the time for which the pauper was originally hired, it is too refined; it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second

Hiring for eleven months and then on an end, gains a settlement.

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cond agreement, it negatives the idea that the parties contracted for another 11 months for the same definite sum which the pauper received under the first agreement; for it is stated that he received about 4 s. a week, which does not amount to the same apportionment of wages. *Ashburst* and *Grose J.* concurring.—Order of sessions confirmed. *Durnf. & East, 3 V. 76.*

Hiring at 3s. per week the year round, gains a settlement.

E. 31 G. 3. K. v. Birdbroke. Two justices removed *M. Meers* and his wife and children from *Stoke* by *Clare, Suffolk*, to *Birdbroke, Essex*. The sessions confirmed the order, and stated the following case:—The pauper being settled at *Birdbroke*, was hired by *J. Olley*, farmer at *Stoke*, at 3 s. per week the year round; each was to be at liberty on a fortnight's notice, but the pauper was not to go away at seed-time, hay, or harvest. He staid in that service a year at *Stoke*, and received his wages at different times whenever he pleased.—*J. Haywood* argued in support of the order of sessions. *Erskine* and *Hay, contra*, were stopped by the court.—*L. Kenyon Ch. J.* said, No doubt can be entertained on this case. It does not even rest on a general hiring, for this was an express contract to serve the year round. But it is said that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice; but whether the wages be to be paid by the week or the year cannot make any alteration in the duration of the service if the contract were for a year. This therefore was a contract for a year at so much a week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice: but the power of giving notice makes no difference, for it has been held that an agreement to leave the service on giving a month's warning did not defeat the settlement.—The other judges concurred. Both orders quashed. *Durnf. and East, 4 V. 245.*

Hiring for a year with liberty to be absent during the harvest month, gains no settlement.

H. 31 G. 2. Bishop's Hatfield and Saundridge. A man was hired from *Michaelmas* to *Michaelmas*, for 5 l. wages, with liberty to let himself for the harvest month, to any other person. He served till the harvest month, and then hired for that month, and received wages for it. During that month, he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5 l. wages. By the court: This is in effect only hiring for 11 months; and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow

allow this, we shall not know where to stop. *Burr. Sett. Cas* 439.

T. 13 G. 3. *Old Sodbury and Westerleigh*. The pauper *William Ayliff* was hired for a year to *Anne Tyler* of *Old Sodbury* to serve her for a year, but at the same time he told her, that he was in the militia, and he might be absent about a month in the year to attend on that duty, but that he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he should be absent. He entered accordingly on his said service with the said *Anne Tyler*, and served her till the month of *May* following, and then joined and attended the militia for thirty days, and afterwards returned to his said service with *Anne Tyler*, and continued therein until the end of his year, and then made her an abatement of 8s. out of his wages for the time he was absent out of his service.—It was argued, that this gained no settlement, because here was no hiring for a year. It is true indeed, that the words are, to serve her for a year: but a hiring for a year, with liberty to be absent for a month, is really only a hiring for 11 months; and when a part of the year is excepted out of the original contract, no settlement can be gained. Now here it was stipulated at the time of the hiring; it was part of the original contract, that he might be absent about a month in the year. In support whereof was cited the above case of *Bishop's Hatfield*, where liberty for the servant to let himself to any other person during the harvest month was holden to make it no hiring by the year.—Unto which it was answered, that this was a good hiring for a year. It is positively stated, that he was hired to *Anne Tyler* for a year, to serve her that year. And what follows is not repugnant to this positive state of the fact: It amounts only to an agreement to dispense with his personal service for about a month, upon the terms he proposed in case such an event should happen. The case of *Bishop's Hatfield* was a hiring from *Michaelmas* to *Michaelmas*, with liberty to let himself for the harvest month to any other person; which was, undoubtedly, only a hiring for eleven months, and no relation at all subsisted between the master and servant during the harvest month. Whereas, here, it was contingent, and the man was to serve the whole year if the contingency did not happen. And he actually did serve the whole year, except these thirty days, and made a proportionable abatement out of his wages. Here was an alternative: It might have happened that he had not been called out to serve

Hiring for a year with liberty to be absent a month in the militia, gains a settlement.

serve in the militia within the compass of his year. — *L. Mansfield* was not in court. *Mr. J. Aston* thought this case distinguishable from that of *Bishop's Hatfield*: That absence for a particular time, with the master's leave, not agreed for at the time of hiring, doth not dissolve the contract: But in the case of *Bishop's Hatfield* the original hiring was with liberty to let himself for the harvest month to any other person. This made a clear chasm in the original contract. It was plainly a hiring for less than a year. In the present case a man is hired for a year, to serve for a year, but mentions an event that might happen of his being called out to attend his militia duty: And told his mistress, that if it should so happen, he would either pay a man to serve in his place, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service. — *Mr. J. Willes* premised, that settlements ought to be favoured; and that militia men ought not to have any additional hardship put upon them, if it can be avoided. However, he could not help thinking, that the case of *Bishop's Hatfield* was very like the present case, and that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed, either to find a substitute, or to abate out of his wages. Now this was at the election of the mistress: And she dispensed with his absence, upon an abatement out of his wages. Upon this distinction, and this only, I would, for the advancement of settlements, distinguish this case from that of *Bishop's Hatfield*. — *Mr. J. Ashurst* said, that in a case which might affect a vast number of militia men, he was for leaning in favour of their gaining settlements. And he thought this case to be distinguishable from that of *Bishop's Hatfield*. That case was certainly no more than a hiring for eleven months. But here was an alternative; it might happen, that the servant should not be called out. Therefore he concurred in supporting the settlement. *Burr. Settl. Cas. 753.*

E. 20 G. 3. Winchcomb and Chipping Norton. The pauper hired himself in the parish of *Chipping Norton*, five weeks before *Michaelmas*, for a year; and at the time of the hiring, it was agreed between him and his master, that his wages should be paid weekly, at 8s. a week, and that, being a balloted man in the militia, he should be absent for the month, and in lieu of that month should serve another month at the end of the year. He was accordingly absent thirty days in the militia, and then returned

turned to his service, but he only continued three weeks of the month which was agreed to be served in lieu of his absence in the militia, leaving his master a fortnight before *Michaelmas*. He expressly swore, that he did not serve his master a year by one week. It was objected, that this was no hiring for a year, nor any service for a year, at *Chipping Norton*. The exception was part of the original contract. There was to be an interval, and then the pauper was to come and serve in the ensuing month, as much more as, pieced to the former service, would make up a year. But a hiring under the statute must be for a whole year without any interruption foreseen and stipulated for at the time of the agreement.—By *L. Mansfield* and the rest of the court: There is in this case a hiring for a year; and there is also a service for a year, if it were not for the month's absence in the militia. A service must be for a continuation, without interruption, or adding together broken pieces to make up the year. But here, the agreement, as to the absence for a month in the militia, was only what would have been implied, and what the master must have consented to. The year was completed five weeks before *Michaelmas*, and the additional month agreed for, was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. The court ought to lean in favour of settlements, and the bad consequences would be very extensive, if we were to determine that a man should lose his settlement by serving his country in the militia. We are all of opinion, that this is a good settlement at *Chipping Norton*. *Douglas*, 376. *Cal. Cas.* 94.

M. 15 G. 3. Fleckney and Empingham. The pauper *Joseph Langton* some little time before *Harborough* fair, hired to *Henry Hubbard* of *Fleckney*, from that *Harborough* fair to the *Harborough* fair next following, being one year, at the wages of 3*l.* subject to a liberty of being absent eleven or twelve days in the sheep-shearing season, and to have the benefit of what he got during that time. He entered upon his said service, and served the said *Henry Hubbard* at *Fleckney* for above three quarters of the year. He went to shear sheep, in the season, for about eleven days, and served the said *Henry Hubbard* at *Empingham* the remainder of the year. He received to his own use what was paid him for the sheep-shearing, over and besides his wages of 3*l.* One day in the season, he asked his master's leave to go a sheep-shearing: his master said, he was going out, and could not spare him that day; and

Hiring for a year with liberty to be absent 11 or 12 days sheep-shearing, gains no settlement.

in consequence thereof he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home. It was argued that this was not a hiring for a year; for it was part of the contract to except eleven or twelve days out of the year: like as in the case of *Bishop's Hatfield*, where hiring for a year, with liberty to let himself for the harvest month to any other person, was holden to be only a hiring for eleven months. Unto which it was answered, That this ought not to be considered as an exception out of the original contract, but upon the foot of a leave of absence consented to by the master; like the case of the militia man, and not like that of *Bishop's Hatfield*, nor within any of the cases which turn upon exceptions out of the original contract.—But the court were unanimously of opinion, that this was an exception out of the contract at the time of making it. They held it to be part of the contract, and not to be considered upon the foot of leave of absence given by the master; who, being bound by the contract, could not refuse agreeing to it. The militia man's case, they said, was a particular case: It was no more than the law would have implied. And it was determined that no settlement was obtained under this hiring. *Burr. Sett. Cas.* 791.

Hiring from
Whitsuntide to
Whitsuntide,
gains a settle-
ment.

T. 10 G. 3. *Newstead and Holy Island*. *Frances Downey* was hired at *Whitsuntide* 1767 to *Thomas Hill* at *Holy Island*, to serve him for a year from the said *Whitsuntide* to the *Whitsuntide* following, at certain wages. She entered upon the said service accordingly at *Whitsuntide* 1767, and continued therein till *Whitsuntide* 1768, when she received a year's wages from her said master for such service. It was further stated, that it hath been usual in that country, to hire servants from *Whitsuntide* to *Whitsuntide*: And that an hiring and service from *Whitsuntide* to *Whitsuntide* has always, by the contracting parties, been deemed a year's service; and agreeable thereto, the master hath always paid the servant a full year's wages for such service, without any diminution thereof or addition thereto, and without making any distinction or difference, whether the space of time between the one *Whitsuntide* and the other consisted of more or less than 365 days.—It was argued, that the space of time between *Whitsuntide* 1767 and *Whitsuntide* 1768, being less than a year (by 16 days), no settlement was gained at *Holy Island* by this hiring and service, being both of them incomplete; and though the court have sometimes relaxed a little as to the service, yet they never relaxed

laxed as to the hiring.—But by the court: There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way of hiring servants in that country, and such service always deemed to be a year's service. Parish officers are, by the 43 *Eliz.* to be appointed in *Easter* week, or within one month after *Easter* (which is a moveable feast): Yet they are considered as executing the office a whole year, though it may fall short of 365 days.—And it was adjudged, that this hiring and service were sufficient to gain a settlement. *Burrow's Settl. Cas.* 669.

M. 1 G. Pepperharrow and Frensham. A person is hired the third of *October*, to serve till *Michaelmas* following; and at *Michaelmas* the master says, stay two or three days and I will pay you. It is said, that this was adjudged to be a settlement; because fraudulent; and if this were allowed, there would be no such thing as a settlement; for every person would hire a servant two or three days after the quarter day, purely to evade the statute. *Cases of Settl.* 80. 10 *Mod.* 293.—But Mr. *Foley*, in reporting this case, says, that upon consideration, the court were all of opinion, that this hiring was not sufficient to gain a settlement; for it is not a hiring for a year: And if we once go out of the act, where must we stop? And in *Str.* 83. this case is cited, and it is there said, that this was held to be no settlement.

Hiring one or a few days short of a year, gains no settlement.

H. 5 G. Coombe and Westwoodhay. *Michaelmas* day was on *Thursday*; and a person was hired upon the *Saturday* following, to serve till *Michaelmas*: And it was held to be insufficient to gain a settlement, being not a hiring for a year. *Str.* 143.

T. 3 G. 2. K. and Westwell. A man was hired three days after *Michaelmas*, to serve till *Michaelmas* following: The justices held this to be a good settlement; but quashed by the court. 1 *Barnardist.* 354.

E. 5 G. 2. South Cerney and Coulsborn. At *Northleach* are annually held two meetings for the hiring of servants, the one on the *Wednesday* before *Michaelmas*, the other on the *Wednesday* after. The pauper was hired on the *Wednesday* after *Michaelmas* to serve till *Michaelmas* following; which he did. It was urged, that this being a hiring according to the course and custom of the country, was a sufficient settlement. But by the court: This is no settlement upon the face of it. There must be a hiring for a year, and that cannot be dispensed with. 1 *Self.* *Cas.* 156.

Hiring at a statute fair held by custom, if for less than a year, gains no settlement.

M. 14 G. 2. Newton and Gouldsborough, in the West-riding of *Yorkshire.* *Abraham Greaves*, the pauper, on *Wed-*

Wednesday after *Martinmas* day, being the 14th day of *November*, and the day on which the first statute fair for the publick hiring of servants was held at *Knareborough* in the said riding, was hired to serve from that time till *Martinmas* day following. Which service he performed accordingly. By the court: This was not a hiring for a year, so as thereby to gain a settlement. *Burr. Sett. Caf. 157.*

T. 20 G. 3. Leeds and Hanwood. At *Otley* in the county of *York*, there is a custom for servants to hire by the year at two different statute days; one on the *Friday* before old *Martinmas*, and the other on the *Friday* next after old *Martinmas*. At which latter statute day, they always hire till old *Martinmas* day following, which by the custom is considered as hiring for a year. Old *Martinmas* day, in 1775, was on a *Tuesday*. On the *Friday* following, being the second statute day, the pauper hired till old *Martinmas* day following, and served that time. It was argued, that this was a good hiring so as to gain a settlement. And for this was cited the following case of *Naveslock*, where a hiring at a statute fair held on the day next after old *Michaelmas* day, to serve till the old *Michaelmas* day following, such hiring being stated to be according to the custom and usage of the country, was held to be sufficient. Unto which it was answered, that it is an established point, that no hiring which on the face of it appears to be for less than a year, is sufficient for gaining a settlement. And in the case of *Naveslock*, as there is no fraction of a day, and as the word *till* might be construed to include the *Michaelmas* day, the hiring was considered as for a complete year.—*L. Mansfield* was absent. The other three judges held this not to be a sufficient hiring for year. And *Mr. J. Buller* said, there is no case where a hiring upon the face of it appears to be for less than a year, in which the court has held that a settlement was gained: And it would be dangerous to make a new precedent of that sort.—And the reporter takes notice of the case of *Syderstone (a)*, and says, that in that case, a hiring on the 11th of *October* 1771, till old *Michaelmas* day 1772, was held to be a sufficient hiring, though there was nothing stated of any custom or usage. *Douglas, 423. Cal. Caf. 100.*

Hiring the day after *Michaelmas* day, till the *Michaelmas* day following, gains a settlement.

M. 13 G. 3. Naveslock and Stendon Maffey. Case specially stated by the sessions, “ That *Thomas Fair* the pauper, at the statute fair at *Ongar* in the county of *Essex*, on the day next after old *Michaelmas* day, to wit, on

(a) *Post*, this same title.

“ the 11th of *October* 1733, hired himself to *Samuel Pofford* of *Navestock* in the said county, to serve till the old *Michaelmas* day following: That he entred upon the said service, and continued in it until the old *Michaelmas* day following; on which day he received his wages, and quitted the said service: It appearing to be according to the custom and usage of the country, to hire servants at the said statute fair, namely, the day after old *Michaelmas* day, in the manner this pauper was hired, the opinion of this court” (*viz.* of sessions) “ is, that the pauper gained a settlement in *Navestock*, by the hiring and service above stated; subject to the opinion of the court of king’s bench, on the question, whether the hiring as above stated is a sufficient hiring for a year to give the pauper a settlement?” It was argued, that this was no hiring for a year. It is a day short of a year. The acts of parliament positively require a hiring for a year, and a serving for a year; and the custom and usage of the country cannot control a positive act of parliament. —Unto which it was answered, That here appears to be a complete hiring for a year, and service for a year. But if it should be admitted, that a day was wanting according to absolute rigid strictness of computation, yet the express stating it to be according to the custom and usage of the country made it a sufficient hiring for a year to give the pauper a settlement. —By *L. Mansfield* (unto which the rest of the court assented): There must be a hiring for a year. If the hiring be for less than a year, it will not do, be the deficiency ever so little. Two days or one day short of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feast to a moveable feast, according to the custom of the country, has been determined to be a hiring for a year. And here they have stated the custom and usage of the country to hire servants in the manner this pauper was hired, namely, at the statute fair the day after old *Michaelmas*. If this should be taken not to be a hiring for a year, there can be no settlement gained in this country by a servant: For all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from *Michaelmas* to *Michaelmas*. *Burr. Sett. Cases*, 719. *Bott.* 387.

E. 17 G. 3. Milham al. Binham and Syderstone cum Bermer. Charles Dawson, being legally settled at *Syderstone*, applied on old *Michaelmas* day to *J. E. of Milham*, to be hired by him, but on that day they could not agree about wages; *Dawson* asking eight guineas a year, and the other

offering only six pounds. On which they parted. The next day, viz. *Oct.* 11th, between two and three o'clock in the afternoon, they were together at a publick house in *Milham*, when *J. E.* asked him if he would take the wages offered him the day before, which he refused; but after some conversation *Dawson* hired himself to the said *J. E.* until *Michaelmas* following, at seven pounds wages; and entred his said master's service on the evening of that same day 11th *Oct.* 1771, and staid in his service till 10th *Oct.* following, being *Michaelmas* 1772. On that day, his master not having finished his harvest, asked *Dawson* to stay and help him with his harvest; and *Dawson* thought himself at liberty to go away, yet he staid with his said master until the next day, to wit, 11th *Oct.* at noon; when, after dinner, he asked his master for his wages, who paid him seven pounds; and *Dawson* quitted his service, but did not ask or receive any recompence for his additional service. The court were clearly of opinion, that *Dawson* by this hiring and service gained a settlement at *Milham*. *Cal. Cas.* 19.

M. 27 G. 3. Beadlam and Skiplam. Two justices removed *Elizabeth* the wife of *William Ware*, from *Beadlam* to *Skiplam*. The sessions confirmed the order, and stated the following case:—That *Ware* the husband of the pauper at old *Martinmas* 1777, being then unmarried, hired himself for a year, and served that year in *Skiplam*: That on the next day after old *Martinmas* day, (viz.) on the 23d of *November* 1778, being then also unmarried, he hired himself to one *Barker* of *Newton*, to serve him from thenceforth until old *Martinmas* day following; and that he did accordingly enter into the service of the said *Barker* a few days after such hiring, and continued to serve him at *Newton* until the old *Martinmas*-day following, on which day, about twelve o'clock at noon, he received his full wages, and left his master's house in the evening of the same day.—*Aspburst J.* It is much to be lamented that there is such confusion in settlement cases; therefore whatever the latest determinations may be, they ought to be adhered to; now the last case, namely, that of the *K. and Syderstone*, seems to correspond with this in every point: Before that, a distinction had been made, as where the hiring and service had been expressly found to be for a year according to the custom of the country; but in the last case, no such distinction was taken; so here there is no custom stated; and “until” must be taken to be *inclusive*. Therefore there was a hiring and service for a year, for he entred into the service the first day of one year,

year, and served to the first instant of the next.—*Buller J.* The only question is, whether *Martinmas* day is to be taken *inclusive* or *exclusive*. The pauper's husband was hired the day after *Martinmas* day, to serve *till the Martinmas day following*. From the moment of the hiring he became the servant of the master, and continued in the service *till Martinmas* day; then does the word "*till*" include the day? the former cases have decided that it does; and if it only included a *part* of the day, as there is no fraction of a day, the service would be complete.—Both orders quashed. *Caf. by Durnf. and East, 1 V. 490.*

E. 27 G. 3. K. v. Mursley. The case specially stated, that *William Coleman*, the pauper, was born at *Redbourn*, and that *three days after Michaelmas 1782* he was hired by *J. Pollard* of *Mursley* to serve him in husbandry, *until the Michaelmas following*; that he served the whole of that time, and received the whole of his wages. That at the time of hiring, *Pollard* told him he should not belong to *Mursley*. The sessions stated it as their opinion, that all such transactions on the part of masters, are fraudulent, to prevent servants gaining settlements; and adjudged that the pauper gained a settlement at *Mursley* by such hiring and service, and confirmed the order, by which the pauper and his wife were removed from *Redbourn* to *Mursley*. But by the court: It is very clear that this is not a hiring for a year so as to gain a settlement. And as to the question of fraud, *Buller J.* said, that only arises where in truth there is a hiring for a year, and a service for a year, and the parties endeavour to colour it in order to prevent the settlement; in such a case the court may say it is fraudulent; but that a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement. Both orders quashed. *Durnf. and East, 1 V. 694.*

Hiring three days after Michaelmas till the Michaelmas following, gains no settlement.

Although such contracts are stated to be fraudulent.

E. 29 G. 3. K. v. Ackley. The pauper being unmarried, on *Saturday 13th Oct. 1787*, being three days after old *Michaelmas* day, which was on a *Wednesday*, was hired to *J. Clarke* of *Ackley*, to serve him until the next *Michaelmas*. He accordingly went into such service, and continued therein till *Saturday* the 11th *Oct. 1788*, being the day after old *Michaelmas* day, which was on a *Friday* (it being leap year), and was paid his wages and went away. As this was a service for 365 days the sessions thought it gained a settlement in *Ackley*, confirmed the order by which he and his wife were removed from *Bicester Market End* to *Ackley*. But the court were clearly of opinion that here was no hiring for a year, this was a hiring for

Nor although there be a service for 365 days (being leap year).

two days short of a year; and though the court has been extremely indulgent with respect to *services*, they have been always strict with regard to hirings: Order of sessions reversed. *Durnf. and East*, 3 V. 250.

Hiring with
one's father.

T. 13 *An. Jessop and Missenden*. Sarah Barnes lived with her father for a year as a hired servant, in a little cottage upon the waste, for 10s. a year, besides what she could get by her service and labour. And whether she gained a settlement thereby, was the question. And the whole court held she did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Foley*, 142.

T. 27 G. 3. *Thorpe and Chertsey*. Jane Filley was removed from *Thorpe* to *Chertsey*; the sessions confirmed the order, subject to the opinion of the court on the following case:—The pauper was hired for a year to Mr. *Shirley* for 4l., and served that year in *Chertsey*; About three weeks before that service expired, her father, who was a day labourer, in consequence of his wife's death, came to the pauper, and applied to her to come and live with him, to do the offices of a servant for a year in the parish of *Thorpe*, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. *Shirley's*, her father was to make up the difference. She agreed to those terms, and came accordingly, and lived with her father at *Thorpe* for a year and upwards, during which time she got about one guinea and a half by keeping fowls, and two guineas and a half by going out charring, and taking in plain work; and at the end of the year, her father gave her 10s. as an additional recompence for her having gone with him to reap in the harvest month.——*Silvester* and *Shepherd* argued in support of the order of sessions, and *Palmer contra* was stopped by the court.——*Aspburst J.* All that is necessary to give a settlement under these statutes is, that there should be a hiring for a year and a service for a year. As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states, that the pauper's father applied to her to come and live with him to do the offices of a servant for a year on certain terms, which she agreed to, and that she came accordingly and lived with him in pursuance of that agreement for a year. The objection is, that this is no hiring, because the sessions have not stated that the pauper lived as an hired servant; but there is no occasion for the sessions to state that expressly, if it sufficiently appear from the terms of the
the

the contract; now in the present case that does appear. Then it was objected that the contract was not binding; but that is not so, she was hired to do all the offices of a servant for a year. The terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all his work, and consistently with that, she was at liberty to gain as much as she could earn by her own labour: This therefore was a good hiring for a year. And as to the service, the case states that the pauper lived with her father in pursuance of the agreement for a year: This is by no means like the *Pittminster* case, for there there was no hiring at all for any time.—*Grose J.* In order to gain a settlement by hiring and service, there must undoubtedly be a hiring for a year and a service for a year. But in the hiring it is not necessary to use technical terms; the word "*hiring*" need not be stated on the case; it is sufficient if it appear that the servant agreed to serve, and the master to pay for that service, for a year. Then the circumstance of the father being the master of his own child will not vary the case; this was not a hiring generally by the father as long as he lived, but a hiring for a year expressly: The father offered the pauper certain terms, which it is stated she agreed to accept; then there was a contract between them for the hiring; according to the terms of this contract, she was not at liberty to desert her father's service, she was only permitted to do what other work she could consistently with her father's service, and her earning besides that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the pauper lived with her father for a year *in pursuance of that agreement*. Both orders quashed. *Cas. by Durnf. and East, 2 V. 37.*

T. 13 & 14 G. 2. King's Norton and Camden. *Mary Calcut* was hired for a year, to spin yarn at 18 d. a stone; and was to provide herself with meat, drink, washing, and lodging, where she pleased. She spun for her master the whole year, and boarded and lodged at her master's, allowing 2 s. a week for the same: But upon her examination she said, that by her contract she thought herself at liberty to play or be absent from her work as long as she pleased, only that she was not at liberty to work for any other master. By the court: This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And what her apprehension was, or whether she was paid by the year

Hiring to be paid according to the work done.

or by the quantity of her work, was immaterial. *Str.* 1139: 2 *Seff. Caf.* 146. *Burr. Settl. Caf.* 152.

H. 20 G. 3. *K. and Bermingham.* The case specially stated was, That *Thomas Baker* was hired in the parish of *Bermingham*, by *John Jennings* a wood screw-maker, for a year, good earn good hire, to work for him and no other master, to make screws, at so much a gross; and this was all that passed upon the hiring: That persons are often hired at *Bermingham* under the terms "good earn good hire," the meaning of which is, that their pay is to depend upon their work. *Baker* had no wages. He was to have what he got. If he got nothing, he was to have nothing. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring; and, during the year, sometimes lodged with his master, sometimes in another house in the parish; and when he lodged with his master, he paid him for his diet and lodging. He sometimes absented himself, to drink or play, for a week or fortnight, and never asked his master's leave for such absence. His master, on his return, was angry and checked him, but always received him again. During such absence, he never worked for his master or any other person. And it is generally understood at *Bermingham*, that persons hired to work in shops, under the above terms, may occasionally absent themselves, but cannot work for another master.—The court was of opinion, that this was a good hiring and service, so as to gain a settlement. *Douglas*, 319. *Cal. Caf.* 77.

Hiring to work
at certain times
only.

E. 31 G. 2. *Macclesfield and Sutton.* *Joseph Brewer*, a bastard child, born at *Sutton*, and maintained by the overseers of *Sutton*, was hired, with the consent and direction of his mother (he being then about eight years of age), to *Macclesfield*, to work at a silk mill there, for the term of three years, at 6d. a week for the first year, 9d. a week for the second year, and 13d. a week for the third. The master was not to find diet or lodging; and the service was to be only 11 hours in the six working days; and all the rest of the time, as well as on *Sundays*, he was to be at his own liberty and his own master. He continued three years in the said service; but within that time, frequently absented himself from his work, sometimes for a whole day, or longer, at other times for several hours in the day; for all which defaults, deductions were made out of his wages. He lodged the whole three years with his mother at *Macclesfield*, who received his wages; which not being sufficient to maintain him, the overseers of *Sut-*

the contributed 6d. a week, during the whole time towards his maintenance. The question was, whether this was sufficient to gain a settlement at *Macclesfield*? By *L. Mansfield Ch. J.* Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it is a settlement as a hiring for a year and service for a year? The pauper was an infant of only eight years of age, at the time of the hiring. Therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable, at his own election :) But the master could not oblige him to stand to it. Then as to the contract itself, it was only to serve eleven hours in the day of the six working days, but during all the rest of those days, and the whole *Sunday*, the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain the parish of *Sutton* did not understand it in this light, having contributed to the child's maintenance during the whole three years. And the order adjudging it to be a settlement at *Macclesfield* was quashed. *Burr. Settl. Cas. 458.*

T. 10 G. 3. St. Agnes and Redruth. The father of the pauper contracted with one *Mr. Nankivell* (the pauper being then 15 or 16 years of age) for the pauper to work at the said *Mr. Nankivell's* stamps situate in the parish of *St. Agnes* (which stamps are mills, wherein several labourers, men and boys, are employed in cleansing and manufacturing tin), for one year, at the yearly wages of 5*l.* In pursuance of which contract, the pauper served the said *Mr. Nankivell*, at his aforesaid stamps, for the said year, by working therein daily, except holidays and *Sundays*, according to the custom of tanners. And his father received his wages, as he had occasion for it. But during the said year, the said pauper did eat, drink, and lodge with his father in the said parish of *St. Agnes*, serving the said *Mr. Nankivell* at his stamps aforesaid, and in no other capacity, nor ever became a part of his master's family.—It was argued, that the pauper did not hereby gain any settlement at *St. Agnes*. That this is rather the case of a journeyman, than of a hired servant. He was resident with his father. He was his own master, except as to performing the stipulated limited service at the stamps. He was only to do that particular service. The master had no right to employ him in any other. And *Sundays* and holidays were absolutely his own, without any controul from the master. This contract is in effect the same as that in the *Maccles-*

field case was ; there, the pauper was to be his own master and at his own liberty the whole *Sunday*, and all the rest of the other days except the eleven hours.—But by the court : This was an intire contract for a year, without any exception contained in it ; and the service was according to the custom of the country. The difference is, where the exception is part of the contract, and where the contract is absolute. The question turns upon this distinction. In the case of *Macclesfield*, it was part of the original contract : Here it is not so. And they were unanimous, that the pauper by this hiring and service gained a settlement. *Bur. Settl. Cas.* 671.

H. 12 G. 3. Buckland Denham and Mells. The pauper, at about 17 years of age, was hired, by his father, to a clothier of *Buckland Denham*, to serve him as a shearmen for five years, and was to work shearmen's hours only (which are uncertain) : It was understood, that he should be at his own liberty at all other times. The master was to teach him the business of a shearmen. He was to have, for the first half year, the weekly wages of 3s. and to be advanced 6d. weekly wages, every succeeding half year ; and was to find himself in meat, drink, washing, and lodging. He served his master, as a shearmen, during the said term, according to the said agreement ; working the same hours as his master's other shearmen did.—

It was argued, that this case falls directly within the above case of *St. Agnes* ; and consequently, that the pauper by this hiring and service gained a settlement in *Buckland Denham*.

—On the contrary, it was insisted, that this present case differs essentially from that of *St. Agnes*. In the case of *St. Agnes*, there was a hiring for a year, and no exception in the original contract of holidays and *Sundays*. But here the exception was in the original contract. And this is the point on which the distinction turns.—And by the court : This is not a good hiring for a year ; because there is an exception in it, that the pauper was to work shearmen's hours only, and to be at his own liberty at all other times. But if the contract be an absolute contract for a year ; the not working on *Sundays* or holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement. *Burr. Settl. Cas.* 694.

E. 31 G. 3. K. v. Kingswinford. On an appeal against an order of removal of *J. Lockwood* from *Kingswinford* to *Birmingham*, the sessions quashed the order, and stated the following case :—The pauper being settled at *Wakefield*, agreed with *W. Bullock* to serve him as an artificer in the

art of a glass grinder, or in any other art he should think proper to employ him in, for 7 years; and was not at any time during that term to work for or serve any other person, nor leave his service without the leave of his master, but would continue and be in such service as aforesaid from 6 o'clock in the morning till 7 in the evening of each day during the said term, including half an hour at breakfast and one hour at dinner times (except on Sundays), if in proper health. His master was to find him shop room, and to pay him 3 s. 6 d. per week during the term, and to provide him meat, &c. He served Bullock 2 years at Birmingham under this agreement, and lodged and boarded at his house. He occasionally worked in the nighttime, and often went on errands for his master on Sundays, and never worked with any body else during that time, nor thought himself at liberty so to do.—*Leycester* moved for a rule to shew cause why the order of sessions should not be quashed, attempting to distinguish this case from the before mentioned case of *K. v. Macclesfield*, by observing that the court there decided that there was an exception in the contract of hiring; whereas here it did not form a part of the contract that the pauper should be his own master after 7 in the evening and on Sundays; but on the contrary he expressly stipulated not to work for any other person during the whole term, and actually did work for his master occasionally in the night time and on Sundays.—But *L. Kenyon* Ch. J. said, that there was no real distinction between this case and *K. v. Macclesfield*; for that the fair construction of this agreement was, that the pauper was to be his own master on Sundays, and on other days after he had served the 13 hours, because he had only covenanted to serve those hours; and that the expression of one, was the exclusion of the other. And he added, that it was essential in these cases, that the servant should be under the power and coercion of the master during the whole time.—Rule refused. *Durnf. and East*, 4 V. 219.

T. 6 & 7 G. 2. *Lidney and Stroude*. *Martha Brewer* was hired to *William Wake* in the parish of *Stroude*, for a quarter of a year; and if her master and she liked one another, she was to continue for a year, and to have 3 l. for her year's wages. She entered into the said service, and continued therein one whole year, and received the said wages of 3 l. It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she consequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year; since the master and she did

Hiring conditionally.

did like one another, and a year's service was actually performed under it. *Burr. Settl. Caf. 1.*

H. 8 G. 2. New Windsor and Chepping Wycomb. *Diana Brooks* was hired to colonel *Merick* at *Thorpe*; and was to go into her service a month upon liking; and was to have 5 l. a year wages; but was to go away from her said service on a month's wages or a month's warning on either side. She continued near two years in her said service, without any other hiring; and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year at *Thorpe*: And she gained a settlement there. *Burr. Settl. Caf. 19.*

H. 16 G. 2. Atherton and Barton. *Ralph Harrison* was hired for a year to *Thomas Barlow* of *Barton*, at 4 l. wages, payable quarterly. And it was agreed between them, at the time of the hiring, that either of them should be at liberty to determine the contract, at the end of any quarter of the said year, on a month's notice. But no such notice was ever given by either; and the servant continued in his said master's service in *Barton* the whole year. The servant declared at the time of the hiring, that the reason of the said hiring being made determinable at the end of every quarter, upon such notice as aforesaid, was, that he would not be hired so as to lose his former settlement. But by the court unanimously and clearly: This is a good settlement in *Barton*. *Burr. Settl. Caf. 203.*

H. 22 G. 2. St. Ebbs and Holywell. Two justices remove *Caleb Guy* from *Holywell* to *St. Ebbs*. And the sessions upon appeal confirm that order. The case was, the said *Caleb Guy* was hired to *Thomas White* of *Holywell* thus: He was to come for a quarter of a year, and to have after the rate of 20 s. a year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any further or other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in *Holywell*, by this hiring and service: For a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to shew cause. But no cause was shewed. And the rule was made absolute. *Burr. Settl. Caf. 289.*

T. 24 & 25 G. 2. Oxelworth and Wotton under Edge. *William Hewett*, settled in *Oxelworth*, agreed with *Thomas Palsor* of *Wotton under Edge*, cloth worker, to serve him in the said business for three years, at so much a week. He was to work 12 hours in a day; and if more, was to have a penny for each hour over. Sixpence a week was to be

retained as a deposit; which was to be repaid to *Hewett* if he performed the agreement, or if *Palfor* should discharge him before the end of three years; but to be kept by *Palfor*, if *Hewett* should quit the said service before the end of the said term. And it was understood between them, that *Palfor* might turn *Hewett* out of his service at any time during the term, paying him the sixpences detained. *Hewett* worked under the agreement for about six months; and then, being ill, absented himself about three months; and then returned, and was received by *Palfor*, and continued to work for him under the said agreement, till the time of his being removed by the order, being for about three quarters of a year after his return. During the whole time, *Hewett* lodged in the parish of *Wotton under Edge*, but not in *Palfor*'s house. By the court: This is a settlement at *Wotton under Edge*. Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides, the two justices removed him whilst he was actually in his master's service. *Burr. Sett. Cas.* 302.

E. 13 G. 2. Wandsworth and Putney. A boy came to live with Mr. *Falkner*, without any hiring; and then his master told him, that if he staid a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's service was an assent in fact, and that it gained a settlement; but referred the matter back to the sessions to be more fully stated. *2 Sess. C.* 188.

H. 22 G. 3. St. James's in Poole and Holy Trinity in Wareham. Two justices removed *Elizabeth* the wife of *James Sampson* and their five children from *St. James's in Poole* to *Holy Trinity in Wareham*; the sessions confirmed the order, and stated specially, That it was proved, that the pauper's husband was born in the parish of *Beer Regis*, and it was also proved by the pauper, that her husband was abroad beyond sea, and had been so for two years past, if alive: That to her knowledge he lived in the capacity of an offler with Mrs. *Lee* in *Holy Trinity in Wareham*, some years since deceased, for about two years, where she had seen him brew; but whether there was any hiring relating to such service, was not proved; but that she had heard her husband say, he was settled in the parish of the *Holy Trinity in Wareham*. In support of these orders it was insisted, that after two years service, and a positive declaration by the husband, when he could be

be under no influence, the court would presume the service performed under a legal hiring.—On the other side it was urged, that a hiring for a year was indispensably necessary to a settlement, whatever number of years service might have been: That in the cases that have gone farthest, there have ever been some circumstances, though slight, from which a hiring might be inferred; that the nature of this service afforded a strong argument the other way, as nothing was more notorious, than that it was not usual to hire officers by the year: But that nothing could supply the want of all evidence of a hiring; that *K. v. Weyhill* (a) was in point.—By *L. Mansfield*: The sessions have drawn their conclusion, that he was hired; and I think they have done right — *Buller* J. Though the evidence is slight, there is nothing to contradict it.—*Willes* and *Ashurst* concurred. Both orders affirmed. *Cal. Cas.* 141.

Service where
no contract did
appear.

M. 13 G. Gregory Stoke and Pitminster. A young woman lived with her grandmother for four years, on an allowance of meat, drink, washing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that she might have left her grandmother at any time, it was adjudged not a hiring within the statute. *2 Sess. C.* 120.

H. 33 G. 2. Corfe Castle and Weyhill. Order specially stated, That it appeared on the evidence of the pauper (the only witness produced on either side) that about the year 1719, one *Robert Pyke*, esquire, took the pauper (being then about eight years of age) into his family, from charity, and gave him meat, drink, lodging, and cloaths, while he continued with him, which was about six years, of which the four last years were in the parish of *Weyhill*. That neither at nor before the time of the said *Mr. Pyke*'s taking the pauper into his family, nor at any time after, was there any contract between the said parties, in relation to the pauper's service of the said *Mr. Pyke* or his continuance with him, or to any wages or other gratuity to be paid him for the same. That during his continuance with the said *Mr. Pyke*, he was employed in running of errands, and doing whatsoever the said *Mr. Pyke* or his servants thought fit to bid him. That no wages were ever paid or given to him. And that in the pauper's apprehension, he was, during all the time aforesaid, at liberty to quit the said *Mr. Pyke*, or the said *Mr. Pyke* to turn him off, as either party should think fit. The sessions were of opinion, that at this distance of time, a hiring for a year, between the

(a) *Post*, next case but one.

said Mr. Pyke and the pauper or his father, ought to be presumed; and therefore they confirm the order of the two justices for sending him to *Weyhill*.—It was urged, in support of the orders, that upon a regular service for above a year, a hiring shall be presumed; that wages are not necessary; that the pauper's apprehension doth not vary the case; that the witness speaks to a transaction when he was but eight years of age; and he might have been hired out by his father, though not by himself.—But by the court: It is clear here was no hiring at all, no contract, but he was taken out of charity, a child of eight years of age, to run on errands, and do whatever he was bid, and left Mr. Pyke when he came of fourteen years of age, and was capable of doing more service. And it is expressly stated, that there was no contract. Indeed, where there is a hiring stated, the court will presume it to have been a regular one, unless the contrary appears; and that was the case of *Crediton and Wincaunton, H. 24 G. 2. (a)* A general hiring was there stated; but here was no hiring at all.—And both the orders were quashed. *Burr. Settl. Cas. 491.*

M. 4 G. 3. St. Peter's and Holy Trinity in Dorchester. The pauper *John Milwood* made an agreement with his stepfather, to live with his stepfather in his house, to work with him at his trade of a button maker, and to be paid at the rate of one penny for every gross of buttons he should make, deducting at the rate of 5s. a week for his meat, drink, washing, and lodging. Under this agreement he lived with him four or five years in the parish of *Holy Trinity*. It was urged, that this was a hiring for a year by implication; for an indefinite hiring is a hiring for a year. By *L. Mansfield*: This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case, that there was no hiring for a year, express or implied. *Burr. Settl. Cas. 513. Black. Rep. 443.*

M. 30 G. 3. K. v. St. Matthew Ipswich. Edmund Stollers and his wife were removed from *St. Nicholas* to *St. Matthew* both in *Ipswich*; which was confirmed at the sessions, subject to the opinion of the court on the following case: About five years ago the waiter belonging to *S. Ribbands*,

(a) *Ante*, this same title.

who kept an inn in *St. Matthew*, being ill, sent for the pauper (who was then a single man and settled in *St. Nicholas*) to assist him at the inn, where he stayed *as helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent to the pauper *to help him*, which he did; and he continued in the inn as boot-catcher for nineteen months, during which time he lodged and boarded there, and was to be satisfied by the gentlemen who came to the house. *Ribbands* knew of his being there the night after he came, but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of *Ribbands* till about *July* in the next year, when he went away, and the pauper continued there till the *Christmas* following, when *Ribbands* and the pauper having some dispute, *Ribbands* told him to go away, upon which he asked for something for the time he had been there: *Ribbands* replied, he should not give him any thing as he had made no agreement with him; but on being pressed again to consider his situation, he not having any thing to help himself, *Ribbands* gave him two guineas; and the pauper then left the house. The pauper considered himself not as a servant to *Ribbands* but as assistant to the waiter, and thought himself at liberty to go away when he pleased: he saw *Ribbands* sometimes, who if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands.—*L. Kenyon* Ch. J. There never was a case like the present in which a hiring was presumed by retrospect. In the case indeed of *K. v. New Windsor (a)*, a conditional hiring with a proper service was held sufficient to gain a settlement: but there there was an express hiring by the master when the pauper first entered into the service. To some of the positions which have been laid down at the bar I perfectly accede; as that there is no necessity for an hiring by the master himself; that if there be an hiring, it shall be presumed an hiring for a year, unless something appear to show that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of *Ribbands*; now that is expressly negatived by the facts of the case. For it is stated that the waiter, being ill, sent for the pauper, who went *as helper to the waiter*; and after staying there six months, went away; and that the waiter being afterwards taken ill again sent for the pauper, who went a second time

(a) *Ante*, this same title.

to perform the business for the waiter. And here the question arises, upon the determination of which this case must turn, in what situation was the pauper at that time? The case states that he came there *as helper to the waiter*; and there is nothing in the case from whence we can infer that he was the servant of *Ribbands*. Therefore down to the time when the waiter went away, it is impossible to say that there was any agreement between *Ribbands* and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with *Ribbands*; but that is not sufficient to give a settlement. If indeed the pauper had been before in *Ribbands's* service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with *Ribbands*, either express or implied, until the last six months. The case of *K. v. Weyhill (a)* is not unlike this: there indeed the pauper was taken out of charity; but in that, as well as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the court will raise such implication: but the nature of the service here implies the reverse. Small circumstances indeed have been held sufficient to raise a contract; as where the master told the pauper "to go into *Ned Hill's* place," it appearing that *Ned Hill* had lived there as a yearly servant: but it is to be observed that in that case there was some conversation between the master and the servant respecting the contract; but here there was none. By the court, both orders quashed. *Durnf. and East, 3 V. 449.*

Unless such person shall continue and abide in the same service] What shall be deemed the *same service* within the meaning of this explanatory statute, hath been much controverted. Concerning which there have been the following resolutions:

What shall be deemed a service for a year.

In the case of *Dunford and Ridgwick, M. 9 An. Mr. Foley* says, the court declared, that there ought to be one intire contract, and one intire service for a year, pursuant to that contract. *Foley, 133.* And *Mr. Blackerby*, in reciting that case, says, it was then held, that there must be one intire hiring, and one intire service in pursuance of such hiring, for a whole year, that must make a settlement. *Black. 244.*—But it must be observed, that this was not properly the point in question. For the question there was, whether a hiring for two half years should be deemed a suffi-

Hiring for a year, and service for a year, but not under the same hiring

(a) *Ante*, under this head.

cient hiring, and not what should be sufficient service under such hiring?

We proceed therefore to the case of the inhabitants of *South Moulton, H. 10 W.* A maid servant was hired for half a year; which time she served: And then was hired for a year, and served half of that. *Rokeby, Terton, and Gould (Holt Ch. J. being absent)* held it to be a settlement, because the statute designed only that the party should serve a year. *L. Raym. 426.*

Another case in the same term was that of *Overton and Steventon*, which was thus: *Bridget Bayly*, before the 25th day of *March 1697*, was a settled inhabitant in the parish of *Overton*; and on or about the said 25th day of *March*, she contracted with one *John Orpwood* of *Steventon*, for the wages of 20s. to serve him from the said 25th day of *March 1697*, till *Michaelmas* then next following; which time she served accordingly. And at the said *Michaelmas*, the said *Orpwood* contracted with the said *Bridget*, from the said *Michaelmas* for one year ensuing, for the wages of 30s. And the said *Bridget*, according to the last-mentioned contract, remained with the said *Orpwood*, till some time in the month of *April 1698*; in which month, by the mutual consent of the said *Bridget* and *Orpwood*, she left her service, and he paid her the proportion of wages then due. The justices thinking the above-mentioned hiring and service aforesaid, continuing for the time of more than one whole year, to be a good settlement, confirmed the order of the two justices for sending her to *Steventon*.—And of this opinion was the court: And the orders were confirmed. *Bur. Settl. Cas. 549.*

E. 1 G. Brightwell and Westhallam. There was a hiring and service from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and service for eleven months. The Ch. J. said, If there was a service for a year, on a hiring from week to week, and then a hiring for a year, and serving for forty days, that he should adjudge that a settlement. The reason is, because till the last statute was made, a hiring for a year, and forty days service, made a settlement; in regard that the hiring for a year shewed that the person was not likely to become chargeable, for that he was able to work. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by forty days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year,

a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes. 1 *Seff. C. 87. Foley*, 143.

M. 1 G. 2. K. and Aynhoe. The pauper was hired in *Bicester* from *Christmas* to *Michaelmas*, and served till *Michaelmas*; then was hired for a year, and served till *Midsummer*. And this was adjudged to gain a settlement in *Bicester*. There were cited for it, the cases of *Overton* and *Steventon*, and of *Brightwell* and *Westhallam*. Lord Ch. J. *Raymond* said, the case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was made previous to the hiring for a year. The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion. 2 *Seff. C. 119. Foley*, 144.

H. 6 G. 3. Underbarrow and Bradley-Field v. Crosthwaite and Lythe. Two justices make an order for the removal of *Anne Kellett* from the township of *Underbarrow* and *Bradley-Field* to the township of *Crosthwaite* and *Lythe*. The sessions, upon appeal, discharge that order, and state specially, That the pauper *Anne Kellett* hired herself at *Christmas* to *John Thompson* of *Crosthwaite* and *Lythe* till *Whitsuntide* then next following; which time she served. At the same *Whitsuntide* she hired herself to the said *John Thompson* for one year, and continued in the said service till the beginning of *March* following, when she and her master parted by consent. The sessions were of opinion, that the said *Anne Kellett* gained no settlement by the said service in *Crosthwaite* and *Lythe*, and therefore quashed the order of the two justices, subject nevertheless to the opinion of this court. It was moved to quash the order of sessions, and to affirm the original order; for that there was, upon the state of the facts, a hiring for a year and a service for a year, when both were coupled together; though indeed the first hiring was for less than a year, and the second service was likewise for less than a year. On shewing cause, it was urged, that the two leading cases above, of *South Moulton* and of *Overton* and *Steventon* were determined upon facts prior to the explanatory statute of the 8th & 9th W. before which statute, a hiring for a year, and a service for forty days, gained a settlement. And it was observed, that in the last case of *Aynhoe*, L. *Raymond* and also Mr. J. *Page* declared, that if it had been then *res*

integra, they should have adjudged it to be no settlement in *Bicester*: And now it appears to be so; as the two supposed precedents were in fact no precedents at all, being prior to the statute of the 8 & 9 *W.* By the court: The authority of these cases will be just the same, whether the facts were prior to the statute or not: Because the court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the court were unanimously of opinion, that for the sake of certainty, it is best to adhere to settled determinations. Though there might be room for great doubt upon this point, if the matter were again open; yet the rule *stare decisis*, is always proper, and especially in these cases of settlements. And the order of sessions was quashed, and the original order affirmed. *Burr. Settl. Cas.* 545. [Note, Upon searching the records it hath appeared, that the case of *Bridget Bayley* was after the explanatory statute of the 8 & 9 *W.* And the mistake did arise from the errors of the several reporters of that case, as to the particular times of her hiring and service. The other case, *viz.* of *Soub Moulton*, is not to be found upon the file: And the report thereof in *L. Raymond* is so very imperfect, that nothing can with certainty be concluded from it. Sir *James Burrow* takes notice, that it is not impossible that this case of *Soub Moulton* may be the very same with that of *Overton*. Which conjecture seems to be supported by this observation, that the reporters of both the cases express that *Holt Ch. J.* was absent. And there was no other determination in that term, according to the reports thereof in *L. Raymond*, wherein it doth not expressly appear that *Holt Ch. J.* was present.]

H 20 G. 3. *Ulverston* against *Underbarrow* and *Bradley-Field*. Two justices remove *Thomasin Hallhead* from the township of *Ulverston* in the county of *Lancaster*, to the township of *Underbarrow* and *Bradley-Field* in the county of *Westmorland*. The sessions upon appeal confirm that order, and state specially, That *Thomasin Hallhead*, being settled in the township of *Underbarrow* and *Bradley-Field* by a derivative settlement from her father, was hired for a year in the said township of *Underbarrow* and *Bradley-Field*, from *Whitsuntide* 1770 to *Whitsuntide* 1771, to one *Burrow*, for the yearly wages of 18s.; where she lived with him under this hiring, till the 12th of *May*, being old *Mayday* 1771: That her master then removing to a new farm in the township of *Strickland Roger*, carried her with him; where she served seven days, which completed her year, and received her wages: Then she again hired her-
self

self to the same master for another year, from *Whitsuntide* 1771 to *Whitsuntide* 1772, for the wages of 25s.; and under this last hiring she continued with him in *Strickland Roger* from *Whitsuntide* 1771 till *Candlemas* following, when by mutual consent she quitted her service, and received her wages up to that time. — In support of the orders, it was endeavoured to distinguish this case from that of *Croftcombe* (a), where the pauper having been hired for a year in one parish, and having lived that year there, and received his wages, continued a quarter of a year longer, and then went with his master into another parish, and lived with him there six months, without coming to any new agreement; and the court held that he was settled in the last parish: Which case was argued on the ground of there being no interruption, no new contract, but a continuance and prolongation of the term of service under the first hiring. So where there is a demise for a year, and the tenant holds over without any new bargain, he is still considered as holding under the original demise. But here the first contract was at an end both in form and substance; there must have been a chasm in point of time between the first and second hiring; it was a new bargain, and the wages were different; the second hiring must be considered exactly as if there had been a change of masters. — On the other side, it was observed, that if a chasm were to be admitted between the end of the first year and the new bargain for an increase of wages, that would not make such an interruption as to prevent a settlement. And for this was cited the case of *Fifehead Magdalen* (b), where there was an interruption and absence from the master's house for above an hour; and of *K. and Ellisfield* (c), where the interruption was still longer, but not for a whole day; which case was determined on the ground that there is no fraction of a day. — By *L. Mansfield* Ch. J. We are all very clear, that this was a continuance of the same service, with an increase of wages. — And both the orders were quashed. *Douglas*, 296. *Cal. Cas.* 65.

M. 19 G. 2. Croftcombe and St. Cuthbert's. Two justices removed *Joseph Garnsey* from *Croftcombe* to *St. Cuthbert's*. The sessions quashed the order, and stated specially, That the pauper hired himself for a year to *Dr. Lucy*, and lived a year with him in *St. Andrew's*, and had his wages and livery; and without coming to any new agreement, continued with him a quarter of a year longer. Then the

Hiring for a year, and service continued beyond the year.

(a) *Post*, this same title. (b) *Post*, this same title. (c) *Post*, this same title.

master removed with his family (*Joseph Garnsey* being one) to *St. Cuthbert's*, where the said *Garnsey* continued to live with him about six months, still under the same contract. It was moved to quash the order of sessions, for that they were mistaken in point of law; the service in *St. Cuthbert's* being a continuance of the first contract, and under it, for the said six months: The servant's last legal settlement must therefore be in *St. Cuthbert's*, where he served the last six months. On the other side it was urged, that this was not the same service as the first year's was; for that the first contract was completed and executed on both sides, and was determined. It had gained the servant a settlement in *St. Andrew's*. And there was no new contract or agreement at all; nor is any thing stated that can destroy the settlement gained in *St. Andrew's* by serving a whole year there. Unto which it was replied, That it is the constant practice for servants to go on upon the first agreement, without any new one. And if this were not the case, then a servant who had lived with his master twenty years in different parishes, without any new contract, must be settled in the parish where his master had lived in the first year of his service. And by the whole court: As there was a hiring for a year, and a service for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where it was performed the last forty days. *Str.* 1240. *Burr. Settl. Cas.* 256.

T. 18 G. 3. *Monk Sherborne* and *St. Giles's Reading*. Two justices remove *Daniel Davies* and his wife and children from *Monk Sherborne* to *St. Giles's Reading*. The sessions confirmed the order, and stated specially, That the pauper, being an unmarried man, went into the service of *Mr. Wilder*, who kept an inn in the parish of *St. Mary Reading*, on 19th December 1763, under a general hiring as a post boy, and continued in that service in the said parish for seven months, when he married his present wife; after his marriage, he continued in his said master's service four months, when he took lodgings in the parish of *St. Giles's*, and removed thither with his said wife, where he slept for seven months, continuing to serve his said master the whole time without coming to any new hiring, making eighteen months in the whole; and then left his service. In support of these orders, it was argued that marriage did not put an end to the contract between master and servant, and that the word "unmarried" in the statute went only to the hiring, and not to the service; and the cases

cases of *Farrington* and *Witty* (a), 1 An. and *Farrington* and *Wicot*, 2 An. in 2 Salk. 527 & 529, were cited. That here no new agreement was entered into, and the service of the first and second years were to be connected and referred to the same original hiring, when the pauper being unmarried, the place where the last forty days were served was his settlement; and that the case above of *K. v. Crofcombe* was in point. On the other side it was admitted, That marriage does not dissolve an existing contract; that the doctrine of the sameness of the contract, and its relation to the original hiring, holds in the case of unmarried persons, who are capable of renewing their contract at the end of the year; but not so in the case of persons married at the time, who by the express provision of the statute are incapacitated: That, if this relation could be carried over to the second year, a man who hired a week before he married, might burthen the parish in which he last served, with all the children he might have during his life.—*Willes*, *Alburt*, and *Buller* J^s, thinking the point new, took time to consider. *Willes* J. the court being then full, delivered the judgment of the court. This case depends upon the construction of 7th sect. of stat. 3 W. c. 11. The act was intended for the benefit of unmarried persons, and the principle of it is, that the parish that reaped the benefit of the labour of a man unincumbered with a family, ought to make a provision for that man when not able to provide for himself, but not for others from whom they derived no benefit; that 8 & 9 W. c. 3. s. 30. used the very same words as the former stat. “unmarried person not having “child or children.” The meaning of these acts is obvious, that the labour of one man shall not be sufficient to incumber a parish with the maintenance of a numerous family. It has been determined this term in the case of *K. v. Hedfor* (b), and *K. v. Hanbury* (c), that marriage does not dissolve the contract, if it happens during the year in which a man has been hired as a single man; to such only the benefit of the act was meant to be extended, and for this reason married persons ought to continue in the settlement acquired before marriage. If there had been a residence of forty days in *St. Giles*’s at the end of the first year, the pauper would have been well settled there; it would have been within the case of *K. and Hedfor*; but that is not the present case. The above case of the *K. and Crofcombe* does not apply: 1. Because that was the case of a

(a) *Ante*, this same title. (b) *Post*, this same title. (c) *Post*, this same title.

servant unmarried during the whole of the year. 2. Because the court did there presume the continuance of the old contract.—Here the pauper was incapable of making a new contract at the commencement of the second year: Presumption can go no further; and at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made: A service under that could not have given the pauper a settlement. Shall he then by an implied contract do that, which in express and direct terms he could not do? If the original hiring was constructively to be continued throughout the second year, it might last for twenty years; and parishes might be burthened with families from whose labour they had received no benefit. Both orders quashed. *Col. Caf.* 54.

Hiring first by the week and then for a year, and the service continued.

M. 22 G. 2. Winton and Chewstoke. Anne Stokes, the pauper, when thirteen years of age, went into *Glew Magna* to the house of her aunt; and soon afterwards went to *Winford*, and worked with one *Nicholas Walker* clothworker, in the business of burling cloths, by a weekly hiring or agreement at the weekly wages of 1s. 6d. each week in the winter, and 2s. each week in summer. On *Saturday* in each week, *Nicholas Walker*, when he paid the pauper her wages for that week, said to her, that she should come the week following. Which she accordingly did, and renewed the contract for the week ensuing, in the same method. She continued to work with the said *Nicholas Walker* in *Winford*, in the manner aforesaid, for a year and an half; but during all that time, constantly returned in the evening and lodged at her aunt's in *Chew Magna*, and also resided with her aunt there on *Sundays*. On the last *Saturday* of the said service, the pauper covenanted to serve the said *Nicholas Walker* for a year, at 1l. 10s. wages; entered immediately into the said service, and continued therein eleven months in *Winford*. By the court: The pauper did not acquire a settlement by this service in *Winford*. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service which was not performed under a hiring for a year, provided it be a continuance of the same service; yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: The former was as a day labourer, or weekly labourer at most; not as a hired servant, who is part of the master's family. *Burr. Settl. Caf.* 280.

E. 22 G. 3. K. v. Bagworth. Sarah Ward was removed from *Bagworth* to *Ratby*. The sessions quashed the order,

order, and stated specially, That nine weeks before old *Michaelmas* 1780, the pauper was hired by *William Hunt* of *Ratby* for one week at 2 s. 6 d. wages, and continued to serve in his house by the week till old *Michaelmas*, and received her wages every week. That during that time she considered herself at liberty to have quitted her service at the end of any one week, and to have hired herself to any other person. That at the said old *Michaelmas* 1780, she was hired for a year from that time, and served till about a fortnight before the following old *Michaelmas*, when being with child, she and her master parted by consent, and she received her wages up to that time. That she was employed in the same manner during the time she served by the week, as under the hiring after *Michaelmas*. — *Willes J.* The question raised upon the merits is perfectly clear; the pauper did not live in this family occasionally, or work merely as a day labourer or charwoman, but constantly as a menial servant, and employed throughout in the same services; and a hiring for a year with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance,) gives a settlement. — *Buller J.* Here is a continuance in the service for a year; and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year; the extent and duration of the several preceding services, where such services have been similar, have never been adjudged to vary the law, but there must be one entire hiring for a year. Order of sessions quashed, and the order of the two justices confirmed. *Cald. Cas.* 179.

M. 11 G. 2. Fifehead Magdalen and West Stower. Wil-
liam Trim hired himself to a master at *West Stower*, from *Midsummer* to *Lady-day*, being three quarters of a year, for 40 s. At *Lady-day*, he received his wages of 40 s. and left his master's service, and then went to his father's house in *West Stower*; and in about an hour returned to his master, and agreed with him for a year, at 3 l. 10 s. a year, and lived with his master half a year, in pursuance of the second agreement. When he went from his master's house, he had no cloaths but what he wore, except a shirt, which he left at his master's house. It was urged, that this was no settlement, for that there should be first a hiring for a year, and then a service for a year under that hiring: Besides, here was a discontinuance: the first contract was at an end before the second contract was entered upon; so that it was not a continuing in the

What shall be deemed a discontinuance of the service.

same service. L. Ch. J. *Lee* said, he remembered the resolution was first come into in L. Ch. J. *Parker's* time, that a hiring for a year and a service for a year were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir *Thomas Powys* (who was just come into the court) very much boggled at it: But now, he added, the rule is established, that if there is a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year. *Burr. Sett. Cas.* 116.

H. 17 G. 3. Popham and Ellisfield. Two justices removed *Samuel Bulpit* and his wife, from *Popham* to *Ellisfield*. The sessions confirmed the order, and stated specially, That the pauper was hired on 6th *December* 1773, to *John Dalman* of *Ellisfield*, to serve till *Michaelmas* 1774; that he went into the service the next day, and continued therein till nine o'clock on said *Michaelmas* day, when he received his wages, and took his cloaths, and left his master's house and service: about half an hour afterwards, his master came to him and desired him to stay, but the pauper asked more wages than the master was willing to give, but said he would see him presently at *Basingstoke* fair held that day for the hiring servants; that at the fair at one o'clock he made an agreement with the master to serve him till *Michaelmas* following, and went into his service that evening, and continued therein for three months; that the pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house, and should have hired himself to any person who would have given him the wages he asked his master.—By *L. Mansfield* and the court: There is not the difference of an *iota* between this case and the last case of *Fifehead*, and every argument used there would apply in the present: It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time; he might have hired himself with any other master during his absence; upon his return he does not agree to continue the *old* service, but makes a *new contract* for more wages: there was therefore a complete abandonment and discontinuance.

The ground on which the court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple J.* observed very properly in *Fifehead's* case, that upon every new contract there is a sort of discontinuance, and that the law of connecting two hirings within the year, which was now settled, could not be supported, where the first period was suffered to elapse before the second contract was made, if this were otherwise. Both orders affirmed. *Cal. Cas.* 4.

E. 27 G. 3. Chipping Warden and Sulgrave. On a rule to shew cause why an order of sessions should not be quashed, it appeared that the pauper had been removed from *Chipping Warden* to *Sulgrave*, and that the sessions had confirmed the order, subject to the opinion of the court on the following case:—That the pauper, subsequent to his gaining a settlement at *Sulgrave*, was hired to *Jonas Welch* of *Wormleighton* the latter end of *November 1785*, till *Michaelmas* next, at 6*l.* 10*s.* wages. Two or three days before *Michaelmas* his master offered him the like sum for the year ensuing, which he did not think sufficient. On *Michaelmas*-day his master offered him 7 guineas, and they agreed for wages all but the expence of washing. The pauper had no intention of leaving his master, and he believed his master had no intention of parting with him; he continued in his master's house and did his work as usual, but without any obligation; he lodged at his master's house, and did not remove any of his cloaths, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on that day, but the day next but one, being the second day after *Michaelmas*, he agreed to accept 7 guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the *Michaelmas* following, but at the expiration of the year from the day he agreed to accept the 7 guineas. He continued in the service until the *Whitsuntide* following.—*Galley*, in support of the order, contended, that the two services could not be coupled, because there was a chasm of a day; for if there be an interruption between two services even for an instant, they cannot be joined for the purpose of gaining a settlement. In the above case of *K. v. Fifehead*, the pauper returned the *same day* and entered into a new contract, and it was holden to be no discontinuance because there can be no fraction of a day. But in *Wishford v. Bratford*,
where

where the servant returned *the day after* he had left his service and made a new agreement, it was determined that he did not gain a settlement, because there was an interruption between the two services; and it is here stated that on *Michaelmas*-day the pauper did not agree with his master, but the next day but one afterwards; so that he was not in the capacity of an hired servant the day after *Michaelmas*-day; and though he continued to work for his master during that interval, yet that service was not of such a nature as could be joined with the preceding and subsequent ones, for he served that time without any obligation, and hirings which are not *eiusdem generis* cannot be coupled. *Burr. S. C.* 282.—*Dayrell, contra*, insisted, that all the requisites of the statute were complied with, because there was a hiring for a year, and a service for a year. It cannot be said that there was any discontinuance of the service, because the case states that the pauper did not depart from his master's service; and supposing no new contract at all had been made, he might have maintained an action against the master for his service on a *quantum meruit*. All the cases where the services have not been coupled have turned on a discontinuance of the service.—*Asbburgh J.* I think this was a good service in *Wormleighton* according to the authority of all the cases cited. All that the statutes require is, that there should be a hiring for a year, and a continuance in the same service for a year: Now the case states that in *November* 1785, the pauper was hired to serve till the *Michaelmas* following; that two or three days before *Michaelmas* the master offered him the same wages for the next year; that on *Michaelmas*-day he offered him 7 guineas, and that on the second day after *Michaelmas*, the pauper agreed to accept the 7 guineas which had been before offered: It is further stated, that the pauper had no intention of leaving his master, and that he did all his master's work as usual; and though he thought himself at liberty to leave his master's service on the *Michaelmas*-day, and that when he agreed with his master the second day after *Michaelmas*, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year. If so, the only question is, whether there was any discontinuance? It appears from the case there was not; for the servant continued in the same capacity, he did his work as usual; and if he had continued to serve for half a year without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have measured his damages by his former

former wages. Then he must be taken to have been in the capacity of a hired servant during that time. This is like the case of *K v. Crofcombe* (a). There the pauper was hired to Dr. *Lucy* who lived in *St. Andrew's* for a year, and he continued with his master a quarter of a year longer without coming to any new agreement, when he removed with his master into the parish of *St. Cuthbert*, where he continued 6 months; there was a sufficient continuation of the same service so as to give the servant a settlement in *St. Cuthbert*. In that case the servant was as much at liberty to quit his master's service after the first year, as the pauper in this case was on the *Michaelmas-day*, and it might as well have been said, that in that case there was not a continuance of the same service; but there the pauper gained a settlement in *St. Cuthbert*. The cases which were cited do not apply, for one was determined on the ground of there being no fraction of a day; and in the other there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one so as to give the pauper a settlement. *Grose J.* delivered his opinion to the same effect. Rule absolute. *Durnf. and East*, 1 V. 778.

E. 4 G. Iningbee and Solebury. A person was hired for a year to one *Knight*, who rented a farm in *Iningbee*, and lived with him half a year: The master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* in the farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, If this shall be deemed the *same service*, so as to gain a settlement? By *Pratt Ch. J.* and the court: This is a good settlement: If a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. 1 *Seff. C.* 121. *Cases of S.* 109. *Sir.* 90.

Same service, but not with the same master.

E. 15 G. 2. Ladock and St. Enoder. *John Roberts* was hired for a year in *Ladock*. His master died within the year, leaving *William Huddy* of *St. Enoder* his executor. The executor asked the servant, if he was willing to serve

(a) *Ante*, this same title.

out the year with him. The servant agreed to it, and did serve the executor in *St. Enoder* during the remainder of the year. By the court: This is a continuance of the same service; the contract was not dissolved by the death of the master; and the servant gained a settlement in *St. Enoder*. And this is a stronger case than that of *Ivinghoe* above, the assignee of the farm in that case being a mere stranger; whereas this was the case of an executor, on whom the law casts a privity of contract. *Burr. Sett. Cas.* 179.

Service with the same master, but not in the same place.

T. 12 An. Silvertown and Ashton. A servant maid was hired for a year in the parish of *Ashton*, where she served half a year; then her master, and she with him, removed to the parish of *Patshall*, where her master took another farm; the servant continued with him in the parish of *Patshall* for the other half year: And the question was, Whether she gained any settlement in either of these places; and if she did, in which of them? By the court: Here is what the act requires, a hiring for a year, and a service for a year; for it is the same service, and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another parish, and serves him for one whole year, the parish he continues last in for 40 days before the end of his year, is the place of his settlement: and the reason why the 40 days gain a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued with him 40 days unremoveable, he gains a settlement. *Foley*, 188. *Cases of S.* 23.

H. 1 G. Bishop's Hatfield and St. Peter's in St. Alban's. Two justices remove one *Langley* from *Bishop's Hatfield* to *St. Peter's*. Upon appeal, the matter was stated specially, that this *Langley* was a huntsman to one *Mr. Arnold*, and that *Mr. Arnold* lived sometimes in *Westminster*, and sometimes at his house in *Northamptonshire*, but that *Mr. Arnold* had no settlement in *St. Peter's*; and that this *Langley* served the last 40 days of his year in the parish of *St. Peter's* with his master *Mr. Arnold*: which the justices at sessions thought gained no settlement for *Langley* in *St. Peter's*, and quashed the order of two justices. But the court of king's bench, upon the order's being removed by *certiorari*, quashed the order of sessions, and held *Langley's* settlement to be in *St. Peter's*, by serving his master *Mr. Arnold* the last 40 days of his year there, though his master *Arnold* had no settlement there. *Foley*, 197. *Str.* 794.

T. 8 G. St. Peter's in Oxford and Chepping Wycomb. Upon a special order of sessions it appeared, that the master

ter of the *Oxford* stage coach hired a servant for a year, to stay in an inn in *Wycomb* where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in *Oxford*. The question was, Where that servant gains a settlement, or whether any by that service? And by the whole court, he gained a settlement in *Chepping Wycomb*, though his master never lived there. *Str.* 528. *Foley*, 200.

T. 8 G. St. Peter's in Oxford and Fawley. Mrs. Cook lived with her son-in law Dr. Clavering at *Christ Church*, and hired a servant for a year, who was settled in *St. Peter's*. Mrs. Cook afterwards goes to *Fawley* upon a visit; and she, with her servant, staid there for three months, and afterwards came back again to *Christ Church*, where the servant ended the year's service, being not 40 days after her return. The question was, Whether this servant gained any settlement at *Fawley*, living with her mistress, who was only a visitor? And by the whole court: The settlement of the servant doth not at all depend on the settlement of the master; for if a master hire a servant for a year, and after remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his master the last 40 days of his year, is the place of his settlement. And it is not material to the servant, whether the master goes there under the capacity of gaining a settlement for himself or not; the servant goes there in the capacity of a servant; and it is like the case of a school-boy; he gains no settlement, but the servant that waits upon him will. And it was adjudged that the servant was settled at *Fawley*. *Cas. of Settl.* 139. *Foley*, 194. *Str.* 524.

E. 30 G. 2. Alton and Elvetbam. This case was argued the last term, and the court took time to consider of it; and this term, L. Mansfield Ch. J. delivered the resolution of the court: This was an order made by two justices for the removal of the wife of the pauper and four children from the parish of *Elvetbam* to the parish of *Alton*; and upon appeal to the sessions the same was there confirmed: But the sessions state the fact specially, That the parish of *Alton* in the year 1722 gave a certificate to the father of the pauper to the parish of *Elvetbam*; under which, the father went to the parish of *Elvetbam*, and has dwelt there ever since: then it states the pauper and other children being born there, and that the pauper on the 29th of *August* 1734 was hired for a year as a covenant servant by Sir Henry Galtbop at *Elvetbam*, and served that year

year out in that parish; that at the expiration of this year, he was hired again as a covenant servant by him for another year, and served that year, but it happened that the last 40 days of the second year were at *Scarborough* in *Yorkshire*; that he did not at the end of the second year quit the service, but on the 29th of *August* 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to *Elvetbam*; whereupon he continued for about six weeks with his master at *Scarborough*, when they returned home to *Elvetbam*; then he was hired for a third year, and served that year out in *Elvetbam*, and continued in his service for seven years more, and his wages were advanced every year; and afterwards he quitted that service, and married, and had four children mentioned in the order, which was, for removing the wife and four children, from *Elvetbam* (the husband having left his family) to *Alton*, which gave the certificate.——The justices considered him serving altogether in *Elvetbam*, and that he could not gain a settlement there. It has been contended that they were in the wrong, for he ought to be considered as having gained a settlement in *Elvetbam*, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate person will not gain a settlement; therefore it is indirectly contended for, that he had gained a settlement: His master goes (probably for his health) to *Scarborough*, and happens to stay there 40 days; and it is contended, that the servant then gained a settlement at *Scarborough*, which discharged the certificate, and then he afterwards gained a settlement at *Elvetbam*.——The general question is, Whether this accidental service of 40 days at *Scarborough* acquired a settlement to the servant? It is immaterial, whether the master has or has not a settlement in the place where the service is; because that will not prevent the servant gaining a settlement: But the objection here is, Whether the 40 days at *Scarborough* are to be considered barely as a continuation of the service at *Elvetbam*, or a new *bona fide* service at *Scarborough*? There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to *Bath*, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances

cumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: Substantially, the master lived at *Elvetham*; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *Alton*. Sir *Henry* happens to go to *Scarborough*, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days at a place, shall that be a settlement? Suppose he stays 40 days with his master in a sea-port, being wind-bound, would that gain a settlement? The master's abode here is at *Elvetham*, which I lay great stress on. The domicile (as the civilians call it) of Sir *Henry* was not at *Scarborough*.—I shall next consider the authorities cited. The principal of which was the case of *St. Peter's* in *Oxford* and *Fawley* (*Str.* 524.) (a). The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court will in such case over-rule it. But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to shew, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange*; where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extraparochial place would gain a settlement. And so *Powel* J. somewhere said, that if a servant was hired for a year in *Ireland*, and the service was performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated that the pauper was hired for a year into *Christ-church*, without saying how or under what circumstances her mistress lived there, and that her mistress went upon a visit to *Fawley-court*. Now

(a) *Ante*, under this head.

her mistress being a single woman could not possibly have any abode in *Christ-church* but as a visitor or friend. And it is farther said, that the only doubt was, whether the settlement gained at *Christ-church* was superseded or not? That could not possibly be so. For she could by no means gain a settlement in *Christ-church*, which was not only an extraparochial place, but a single house only, having been once a monastery, being in nature of one of the king's palaces, which may be extraparochial. I mention this, to shew the incorrectness of cases, which cannot be relied on. This case is also in *Foley*, 215. and *Case of Settl.* 139. reported differently. But all of them together may serve to help us to the truth, and which upon inquiry I find to be this: Mrs *Cook*, the mistress of the servant, had two daughters; one married to Dr. *Clavering* dean of *Christ-church*; the other, to Mr. *Freeman* who lived at *Fawley-court*. And she lived alternately with these two gentlemen her sons-in-law; and was as much at *Fawley-court* as at *Christ-church*, and (as I observed before) it was not possible the servant should be settled at *Christ-church*, because it was an extraparochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* and *St. Peter's* in *St. Alban's* (*Foley*, 197)(a), where a huntsman was hired by one Mr. *Arnold*, who lived sometimes in *Westminster*, and sometimes at *Northampton*, and the servant resided, where the hounds were kept, at *St. Alban's*; and the only question was, Whether the servant could acquire a settlement there by such service, as his master had none? and there was no doubt but he could; for he came exactly within the case of a stage coachman, who was hired to serve at *Wycomb*, though the master lived at *Oxford*; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, Whether there was a continuance of service with the master in *Westminster* or *Northampton*, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament; and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London*. However there is no precision in the case on which the court can rely; and upon the whole, I think it not at all inconsistent with our present resolution; which is, that in the present case the whole of the

(a) *Ante*, under this head.

service was only a continuation of the service at *Elvetham*. However I would have it observed in the present case, that I lay great stress on both the master and servant considering *Elvetham* as their home, as also upon the precedent and subsequent service, and upon the circumstances of the certificate.——There was another objection at bar, but not relied on; that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he is living, they must remove him after to his family. And both the orders were confirmed. *M. S.*

And the difference between this case and that of *St. Peter's* in *Oxford* and *Fawley*, seemeth to be this: that a visitor, during the time of the visit, may be considered as part of the family of the person visited, and hath there *pro tempore* his home and place of abode; but a person at *Scarborough*, or other such like place of publick resort, under the circumstances above mentioned, is only a sojourner, or in the nature of a traveller, or as a guest in an inn, and cannot in any sense within the words of the statute be looked upon as coming to settle there.

[Note, with respect to the aforesaid case of *St. Peter's* and *Fawley*, Sir *James Burrow* says, there having been so much doubt and misapprehension concerning it, he has had the curiosity to transcribe it from the original record: which is as follows:—Two justices removed *Mary Norris* from the parish of *St. Peter's in the East* in *Oxford*, to the parish of *Faaley* in the county of *Oxford* aforesaid. Which order was discharged by the sessions, upon appeal; it appearing (as it is stated in the order of sessions) that the said *Mary Norris* was hired at *Christ-church* in *Oxford*, an extraparo-chial place, on the 16th of *May* 1717, for one year to *Mrs. Cooke*, who then lived, and ever since hath lived, with her son-in-law *Dr. Clavering*, canon of *Christ-church* college aforesaid, as a sojourner or boarder; and continued in her service there till the month of — in the same year; when *Mrs. Cooke* went, upon a visit, to her son *Mr. Freeman's*, in the parish of *Faaley* aforesaid, where she continued three months, upon the said visit; and her said servant *Mary Norris* was with her at the said *Mr. Freeman's*, and continued there in her service all the three months. At the end of which the mistress returned to *Christ-church*, and there the service expired, she having served her mistress the whole year, in pursuance of the first hiring: And the order of sessions was quashed, and the original order affirmed. *Burr. Settl. Cas.* 422.]

M. 15 G. 3. East Ilsey and Weybridge. The pauper *James Allen* was hired for a year, and so for two years afterwards successively, to the earl of *Portmore*, to look after the said earl's running horses; and during the said three years removed from place to place with the said horses, the last ten months of which time he resided with the said horses at *East Ilsey*, which was a publick place for exercising and training running horses; which said earl had not any house in *East Ilsey*, nor any estate there. The question was, Whether a groom, residing at a publick place, where his master had no house nor estate, merely for the purpose of training running horses, should gain a settlement at that publick place? And the court were unanimous, that this was a good settlement, being exactly the same case as that of the huntsman at *St. Alban's*. *Burr. Settl. Cas. 722.*

Settlement is
gained where
the servant
sleeps.

E. 11 G. K. and Whitechapel. A person was hired for five years, to work at a glass-house in *Whitechapel*, at the rate of 10s. a week; but never lodged with his master in the house any part of the time, but at another house in the parish. By the court: He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish. *2 Sess. C. 114. Foley, 146.*

T. 18 G. 3. Little Marlow and Hedfor. *William Monk* was removed from *Little Marlow* to *Hedfor*; on appeal the sessions confirmed the order, and stated specially, That the pauper was hired for a year to lord *Boston*, and served him as a gardener for several years in the parish of *Hedfor*; that 95 days before the end of the 4th year, he married a woman of the parish of *Little Marlow*, and from the time of his marriage until the end of that year's service he lodged with his wife in *Little Marlow* 40 nights, but not successively, but did not lodge 40 nights elsewhere after his marriage. It did not appear that lord *Boston* had any property in *Little Marlow*, nor where the pauper lodged the last night of the year's service in which he married. It appeared that he did not see lord *Boston* within that year in which he married, nor had any consent to be absent those 40 nights; and that he never performed any service in *Little Marlow* on account of his master; that he continued to serve lord *Boston* several years after his marriage.—*Dunning* contended in support of these orders, that the inclination the court has always shewn in favour of settlements, need not be indulged in

in this case, as the servant had gained a settlement by the first year's service. Formerly it was questioned whether the service ought not to be in the same house; and though it was thought sufficient if in the same parish, yet it has since been holden, that if a servant continues 40 days in a parish in *his master's service*, the reason he gains a settlement by the 40 days is, his coming into such parish *with his master*; and that the court would not permit the servant to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him.—*Wailace*, in reply, cited a variety of cases to shew that a man is settled where he lodges the last 40 days, although not successive; that the *K. v. Castleton* (a) was in point; the only difficulty is, whether the want of the master's knowledge can make any difference? If his master's business is done as well as if he lodged in the family, which the case shews it must have been, it can make none.—*L. Mansfield*: The cases seem to have settled it. The other judges concurred. Both orders quashed. *Cal. Caf.* 51.

And in the case of *Avening* and *Nympsfield*, *H. 21 G. 3.* the same point came in question, but was given up by the counsel as being fully settled. *Cal. Caf.* 107.

E. 7 G. K. and Iffip. A person is hired for a year; and in the year's service his master gives him leave to go and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service, and the time he stayed away takes so much off from a complete service for a year. But by the court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service.—In the same case it was stated, that the servant for six days was sick, and incapable of any service: And it was objected, that therefore he could not gain a settlement, which is to be acquired only by a service for a year; but here he did not serve for six days, and so there wants so much of a service for a year. But by the court: A servant that lies thus under the visitation of God, which befalls him not through his own default,

What shall be deemed an absence with leave during the service.

(a) *Ans*, title *Door*, Certificate. And also *Door*, Settlement by apprenticeship.

-is and must be taken to be all the while in the service of his master ; and if this exception were to be allowed, it might prevent all the settlements in the kingdom.—Another circumstance in the same case was this : The servant, three or four days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding ; and did not return until the time of his service was expired. By the court : This is nevertheless a settlement. The request of the servant is a reasonable request ; and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires ; if he doth, the service in point of law continues, and he gains a settlement notwithstanding. *Cases of Sett.* 129. *Str.* 423.

T. S. G. Eastland and Westhorley. A servant was hired for a year ; and the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately ; which the servant refused to do, insisting to serve out the year ; whereupon the master turned him out of doors. The court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Str.* 526.

E. 17 G. 2. Beccles and Lowestoft. A person was hired to a blacksmith for a year, at 3*l.* a year. During the year the master gave him leave to work with another smith for three days, with another for a week, and with a third for a fortnight ; and agreed that the servant should have the advantage of it. After which he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away. The sessions held no settlement was gained, the first contract being dissolved. But by the court : The order must be quashed ; for this is not a dissolution of the contract, but a licence to be absent. Service by the master's consent with another person is service of the master. But in this case, if it had been without the master's consent, yet the absence had been dispensed with by the master's taking him again. *Str.* 1207. *Burr. Sett. Cas.* 230.

T. 19 G. 2. St. Peter's in Sandwich and Goodneston. William Markham was hired for a year, and lived with and served his master in Northbourne till within three weeks of the end of the year, when he asked leave of his master to go to the herring fishery. The master consented, if he

he could get a man to do the master's work to his liking. *Markham* did so, and paid the man. *Markham* went to sea, and returned at the end of the herring fishery, which was about three weeks after the end of his year. The master paid him all his year's wages. By the court : This was no dissolution of the contract ; *Markham* gained a settlement at *Northbourne* ; and as the master had the benefit of the contract during the whole year, so ought the servant also. *Str.* 1232. *Burr. Settl. Cas.* 251.

T. 26 & 27 G. 2. *Hanbury and Tardebigg*. The servant was hired for a year at *Michaelmas*, but did not come to his service till three days after *Michaelmas* day, and served till the day after *Michaelmas* in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6s. 6d. of his wages, for the time he was absent. By the court : He gained a settlement by this service. This court hath not been so strict in determining upon the service, as they have been upon the hiring. It hath often been held, that though a servant has been absent for a time, yet his master taking him again purges his absence. And there is no difference between an absence in the beginning and in the middle of the service ; for he is a servant from the time of hiring. *Burr. Settl. Cas.* 322.

E. 32 G. 2. *Kislingbury and Nether Hyford*. It was stated, that *John Gare*, the pauper, was hired for a year, to widow *Bliss* of *Furthingstone* ; and continued in the said service until five weeks before the end of the year ; when, with his mistress's leave, he parted with her and went to work at *Kislingbury*, and staid there the said five weeks. After the end of the year, the said *Gare* went to his said mistress *Bliss* for his year's wages ; the whole whereof she laid down to him, and he thereout voluntarily deducted 10s. for his five weeks absence, being the same sum he had earned and received for his five weeks at *Kislingbury*. The original contract was not dissolved, nor any new one made with his mistress *Bliss*, save as aforesaid. And if his mistress had, during the said five weeks, required him to return to her, he would have done so. It was objected, that this could not be a settlement, as there wanted five weeks of the service. By *L. Mansfield* and the court : The question turns singly upon this, Whether his absence for five weeks was a dissolution of the contract ? If he had his mistress's leave, it was not ; if he had it not, it was. And we are all of opinion, that it was only an absence with leave. For it appears, that

both parties considered the contract between them as subsisting, and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent, considering himself as her servant during that time. For otherwise the deduction would not have been a deduction of the particular sum earned by him; but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore we are all of opinion, that the contract was not dissolved, and consequently that the pauper gained a settlement with his mistress *Bliss* at *Farthingstone*. *Burr. Sett. Cas.* 479.

E. 33 G. 2. Christ-church and St. Matthew's Bethnal Green. *Elizabeth Muxey* was, on the 24th day of *August* 1757, hired into *Christ-church* for a year, and continued in the said service till the 7th of *August* then next following; when she was frightened into fits, and thereby rendered incapable of doing any service. Her master being taken ill, and disturbed by her fits, desired *Mr. Lemonier*, who lived in the parish of *St. Matthew Bethnal Green*, to take her into his house, that she might be under the care of her sister who lived there; but if *Mr. Lemonier* refused to receive her, she was then to return to her master's house. *Mr. Lemonier* took her in; and she resided there about five days; and then was taken into the hospital. The day after she had been received into *Mr. Lemonier's* house, she returned to her said master's house to fetch away her clothes; and her mistress gave her two shillings, which, with what she had before received, made up the full year's wages. No words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service; but believed, that had she recovered her health, her master would have received her again into his service. She continued under the same indisposition, till after the year from the said time of hiring was expired; and never returned again into her said master's service. And on the 17th of *August* 1758, her master hired another servant in her place. It was objected, that this service could not gain a settlement, being seventeen days short of the year. The cases that have been were, where the absence was in the middle of the year, and the absence purged by the master's receiving the servant again. But here the absence was 17 days at the end of the year; and if this be allowed, where can the court stop? It may as well be a want of three

weeks, or a month, or two months. By *L. Mansfield* Ch. J. This case is an additional proof, among many others, upon how inconvenient a foot the law of settlements stands. This must appear a very clear case to any person of common plain sense and understanding. It is certainly a fair *bona fide* service for a year, without any fraud on either side. If a master gives his servant leave to go upon any other service, or to be absent for a short time, and pays him his whole wages, this is a good service. If the servant is taken ill, by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service; and cannot deduct wages in proportion to the continuance of the servant's sickness. And there is no difference, whether the accident of sickness happens in the middle or at the end of the year. It is equally the act of God, and without any fault of the servant. And in the present case, the servant's being at Mr. *Lemonier's*, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof. *Burr. Settl. Cas. 494.*

T. 6 G. 3. Erome Selwood and Brixton Deverei. Richard Stent, the husband of the pauper, was hired for a year at *King's Weston*, and served that year till within ten days of the end of the year, when *Stent* declaring to his master, that he wished not to be settled in *King's Weston*, asked his leave to go and visit his relations; to which the master consented. After the year was expired, *Stent* returned to his master, and then hired himself as a day labourer, and as such continued with him about three months. On making up their accounts, *Stent* allowed out of his daily wages, for the days he had been absent the preceding year. The court held the settlement to be in *King's Weston*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement. *Burr. Settl. Cas. 565.*

H. 11 G. 3. Madington and Wilsford. The pauper, being hired for a year from *Michaelmas*, continued in his service till about three weeks before the next *Michaelmas*; when, having been kicked by one of his master's horses, he went home to his friends, about five miles off, without his master's knowledge or asking his leave, to cure his leg; and continued there during the remainder of the year, and never returned to his master, except for his wages, some short time after *Michaelmas*; when he was paid the whole, except six shillings, which the master

deducted on account of the said absence ; which the pauper consented to.—It was argued, that the pauper by this service gained no settlement : That this was a desertion of the service : It doth not appear that it was necessary for him to go home ; or that he could not return again ; or that he was disabled by this kick, from being able to perform his service, at least in some degree ; or that the master knew where he was. And nothing shall be presumed, that is not stated.—But the court were of opinion, that the servant gained a settlement by the service here stated. And they thought it to be within the reason of the determination of the *Iffip* case (a). Here, the cause of his going home to his friends clearly and fully appears to have been to cure his leg, which had been hurt in his master's service, and by a kick from his master's horse. This was a reasonable cause of absence. It did not dissolve the contract, nor hinder his gaining a settlement ; and the master ought not to have deducted any part of his wages. *Burr. Settl. Cas.* 675.

T. 11 G. 3. Potter Highbam and Ludham. A servant, hired for a year, continued till the day before the end of his year ; when he desired his master to discharge him ; telling his master, that as he had hired himself for the next year to a person in a distant place, he wished to pass that day with his friends ; and requested to have that time to himself, to spend with them. To which the master consented. And he was accordingly discharged ; and then received the whole of his wages, except sixpence, which he allowed [to his master for that day.—This was holden not to be a dissolution of the contract, but an absence by leave of the master. And it was adjudged, that the servant by this service gained a settlement. *Burr. Settl. Cas.* 690.

E. 13 G. 3. St. Margaret's Westminster and Richmond. The pauper *William Springall* was hired for a year to *Alexander Crawford* esquire of *Richmond*, on the 30th of *October*, to serve till the 30th of *October* following. Before the expiration of the year, namely, on the 4th of *September*, the pauper married a fellow-servant. The said fellow-servant had given a month's warning in *August* preceding to quit the service, and was to quit it in *September*, in consequence of such warning ; but was desired by her master to stay till the 17th of *October*, which she did : And then the master said to *Springall* (the husband) that he

(a) *Ante*, under this head.

supposed, as his wife was going away, he (the husband) would like to do so too. The husband replied, he would like it better, if it was agreeable to the master. His master said, he had no objection, as he had another footman coming, and would pay him his whole year's wages : Which he accordingly did on the said 17th, in full to the 30th. On which said 17th of *October*, both the husband and the wife left the service. It was objected, that the pauper did not gain a settlement by serving for a year, because he left the service 13 days before the expiration of his year. The act of parliament is express, That no such person so hired as aforesaid shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of one whole year.—By *L. Mansfield* (with whom the other judges concurred) : There is no necessity of an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again ; that is, the subsequent consent of the master ratifies the act done. I am clearly of opinion, that the servant has in the present case sufficiently served his whole year. The master voluntarily gave him leave of absence for the last 13 days ; and, of his own accord, paid him the whole year's wages. *Burr. Settl. Cases, 740.*

E. 18 G. 3. St. Faith under St. Paul's and St. Bartholemew by the Exchange. Case stated, that the pauper *Ursula Owen* was hired for a year by *Mr. Hesbysen* on 11th *June* 1771 : That in *April* following her master told all his servants that he was going to live at *Manchester*, but did not know the time ; and that they might look out for services, or stay with him until he went, as they chose : That the pauper continued with her said master in the parish of *St. Bartholemew* aforesaid, till the 4th *June* following, when her master paid her the whole year's wages and half a guinea over, and that same day he left *London* : That his going that day was quite a casual matter, and if he had remained in *London* he should have continued the pauper in his service, as she was a good servant : That the pauper went into a new service two days after her master left *London*.—The case of *K. v. Castlechurch* (a) was strongly relied on as in point : That the servant in this case having entered into a new contract, and being

(a) *Ante*, this same title.

in the act of gaining a new settlement for the second year, during the lapse of the first, distinguished this case from the last case of *K. and Richmond*; and that to hold this a settlement would be to allow the pauper to be gaining two settlements at the same time under different hirings.—But by *L. Mansfield* and the court, the only question is, whether the servant continued *bona fide* in her service during the whole year? To be sure there is a distinction between exceptions from the contract originally, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *bona fide*, it can make no difference, when the servant is engaged or where; or whether the service be in the same or another occupation: She quitted her service at the desire of her master, and received half a guinea beyond her wages, as an equivalent no doubt for her board. It was accidental, and a favour to her master. The case of *K. v. Richmond* is full as strong as this, for there a new servant came into the very place. Fraud vitiates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country and had no other settlement, shall she lose her only one which she deserves so well? *Cal. Cas.* 48.

E. 28 G. 3. K. v. Sulgrave. The pauper, *Daniel Plester*, being settled in *Sulgrave*, was hired in *February* to *Mr. Howes*, of *Stouchbury*, till old *Michaelmas* following, and served him accordingly. On the *Friday* before old *Michaelmas*, his master asked him if he would stay again; the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. The pauper immediately went away, and having gone about ten yards, returned for something he had forgotten: he then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at *Michaelmas*, because of your settlement, and I will give you that fortnight to get what you can; to which the pauper agreed, and he accordingly went to his father's and stayed a fortnight, during which time he worked for *Mr. Chester*, in digging sand on *Mr. Howes's* land, and received from *Mr. Chester* one shilling a-day, and once or twice during the fortnight he eat at *Mr. Howes's*. At the end of the fortnight he went to *Mr. Howes's*, and continued to serve him at *Stouchbury* till *Lady-day*, when *Mr. Howes* removed, and the pauper with him, to *Culworth*. *Mr. Howes* soon after died, and the pauper continued to serve *Mrs. Howes* in *Culworth*, till the time when he left her, and he then received his wages

wages up to that time ; and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper apprehended that his master would not have hired him, if he had not agreed to go away for the fortnight.—The sessions, being of opinion the pauper gained no settlement by this service, confirmed the order of removal from *Westbury to Sulgrave*. This case was argued by *Dayrell* and *Lowndes*, in support of the order of removal. And *Erskine* and *Wilson*, contra, were stopped by the court.—*Asphurst J.* The rule established in these kinds of cases is this ; where there is a *bona fide* exception of part of the time at the time of the hiring, that is not a hiring for a year ; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master ; and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question whether it be one or the other, must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight : but the contract was complete before that time, and what passed afterwards can only be considered as a dispensation with the service ; for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the one shilling earnest was to bind the agreement for a year for five guineas ; otherwise it appears to be giving the servant more than he originally asked for the whole year for serving him for a shorter period. If then the contract were complete before any thing was said relative to the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced ; but here it was not made on the request of the servant, but on the offer of the master ; and it appears, that he said it was for the express purpose of preventing the pauper's gaining a settlement. That is not such a reason as the court would give much countenance to. Whether indeed the sessions might not have determined this on the
ground

ground of fraud, was for their consideration: as it is, there is no occasion to go into that ground, as we are of opinion this was a dispensation with the service. With respect to the servant's apprehension, which is stated in the case, that cannot vary the question; we are to decide on the terms of the contract, and not on the apprehension of the pauper.—*Buller and Grose* J^s. of the same opinion. Rule absolute. *Caf. by Durnf. and East*, 2 *V.* 376.

T. 28 G. 3. K. v. St. Philip in Birmingham. Susannah Brookes, the pauper, was originally settled in *Birmingham*; but subsequent to her settlement there, she was hired for a year to *Eliz. Poole*, in the parish of *Powick*, where she served until within 8 days of the end of the term, when, on account of some difference between them, she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her, and paid her the full wages, which she accepted and quitted the service, and left the parish 8 days before the year ended; but said, she would have served her year if her mistress would have let her. She was removed from *Powick* to *Birmingham*, which was confirmed by the sessions on appeal.—*Bower and Welch*, in support of the order of sessions, argued, that in this case the relation between master and servant was absolutely put an end to 8 days before the end of the year. That the mistress paying the wages, and the pauper accepting them, amounted to an assent on her part to the dissolution of the contract; and cited *K. v. Gresham (a)*.—*Beacroft*, contra. The principle laid down in *K. v. St. Bartholemew* by the *Exchange (b)* must govern this case: That it cannot be considered as a dissolution of the contract, without the consent of both parties; and here it is stated, that the servant was willing to have stayed to the end of the year if her mistress would have permitted her; and the impatient behaviour of the servant was not a sufficient ground to discharge her; and the facts therefore in this case only amounted to a dispensation of the service by the mistress.—*St. vester*, on the same side, was stopped by the court, who thought this case distinguishable from the *K. v. Gresham*, and more like the *K. v. Richmond*; and that this was to be considered more as a dispensation with the service, than a dissolution of the contract, and as a mere wrongful act of the mistress in dis-

(a) *Post*, this same title.

(b) *Ante*, this same title.

missing her, and which was *submitted* to, but *not agreed* to by the servant.—Rule absolute. *Durnf. and East, 2 V. 624.*

So also in the case of *K. v. St. Andrew's Holborn, T. 28 G. 3. Mary Robinson*, who was hired for a year, and continued in her service until within 4 or 5 days of the end of the year, when her master becoming a bankrupt, and the messengers taking possession of the house, her mistress discharged her, paying her the whole year's wages.—This case was not argued, the court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement by such hiring and service. *Durnf. and East, 2 V. 627.*

M. 1 G. Paulett and Burnham. A person was a covenant servant for a year, but went away 3 weeks before his year was out, by his own and his master's consent; and was abated 6 s. of his year's wages for it.—It was objected, that being a covenant servant, this doth import that it was by deed, and then the consent cannot discharge the covenant.—But by the court: Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *volens volens*? As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant; and as to that point the service continued; but not as to gaining a settlement, where the statute saith he must serve for a year, which is not in this case. *Cass. of Settl. 84. Fley, 187. 1 Seff. Cas. 71.*

H. 4 G. 2. K. and Preston. A person served under a hiring his whole year within 5 days, and then left his master by consent, the parish officers where he lived having first given him two guineas to leave the parish. The justices held this to be no settlement, and stated the case specially. It was objected, that this departure was fraudulent. But by the court: The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year. *Burr. Settl. Cas. 69.*

M. 9 G. 2. Syford and Castleburch. A person was hired for a year, which he served till the last twelve days, when he went away with his master's leave, and staid till after the year was up, when he returned for his cloaths, and

What shall be deemed a dissolution of the contract.

was paid the whole year's wages. And on consideration, that if they once allowed this absence for twelve days at the end of the year (which differed from an absence in the middle of the year, which was purged by taking him again) they should not know where to stop, it was determined that he gained no settlement. In this case the servant went from his service before the year was out, and the master consented to it; which is a plain determination of the service within the year. *Str. 1022. Burr. Set. Cas. 68.*

E. 31 G. 2. Coverjwall and Trentham. Samuel Brasington the pauper was hired for a year to *Edward Brasington* at *Trentham*, and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service; and received all his wages, except what was deducted for the three weeks. As soon as he left his service, he went to *London*, and was absent about a fortnight. Upon his return, at *Mrs. Brasington's* request (his master being then from home) he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year; and he served him in *Trentham* for about six months of that second year, and then left him. By the court: Here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year; and consequently no settlement was gained at *Trentham*. *Burr. Settl. Cas. 461.*

T. 11 G. 3. Ross and Whitchurch. Thomas Chest, the pauper, hired himself for a year to *Edmund Miles*; and served him, in *Langarren*, only three days. A difference arising between them about the business the pauper was employed in, *Miles* (the master) bid the pauper go about his business. On which the pauper immediately ran away, and quitted his service; and hired himself to *John Whitby* for a year, at 55s. a year wages, and served *Whitby* for six months in *Whitchurch*. *Miles* then insisted on *Whitby's* not keeping the pauper in his service. *Whitby* paid the pauper his wages to that time; and the pauper quitted that service, and went one or two voyages up the river *Wye*, as a labourer to a barge-master, for a fortnight. Then, at *Whitby's* request, and with *Miles's* consent, he returned into *Whitby's* service, without coming to any new agreement, or any mention of wages; and continued in *Whitby's* service in *Whitchurch* seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages.—

It was argued, that the fortnight's absence being in the middle of the year, it was purged by the master's receiving him again. But by the court: Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring. *Burr. Sett. Cas.* 688.

M. 22 G. 3. Hartley and W. Smeon. Robert White, being settled at *Hartley*, was hired on 11th *October* 1779, to *John Gibbs* of the parish of *Tipton* for a year; he entered on the same day, and continued in his service until the 6th *October* 1780; when he was apprehended by a warrant, being charged by *Rebecca Haberszen* with being the father of a bastard child, of which she had been delivered six months before: That he was carried to an inn, and kept in custody by the parish officers till the 10th *October*: That his master on the said 6th *October* settled with him at the said inn, saying, that he might not see him again, and deducted 1s. out of his wages, on account of his not serving the whole year; "though he said he had no objection to the pauper's gaining a settlement at *Tipton*, yet perhaps the other farmers might." That the said master did not in any other manner assent to or dissent from the pauper's absence. That the pauper after his being so taken, did not return to his said service — It was argued, that getting a woman with child previous to the commencement of the service, was not such an offence as could give the master an authority to discharge him: That the servant was not accountable to his master for any thing previous to the contract: That if being once the father of a bastard child authorised this master in the discharge, it would also any subsequent master throughout the whole of the servant's life: That nothing appeared to shew the servant consented, and that the deduction of wages was made without his consent.—On the other side it was insisted, That the pauper was not in point of fact in his service during the last four days, and there were no circumstances to induce the court to say that he was so by construction: That the servant could not have supported an action against his master for his wages during his imprisonment, and therefore could not against the parish claim a settlement:—By *L. Mansfield*: It is not necessary to enter into the question how far this is a crime, because the master has not discharged the pauper upon that ground: That it is wrong and an offence, no man will deny; but whether to be animadverted upon both by the ecclesiastical and common

common law, is not material here: To be sure it was not punishable as a crime at common law; and the statutes seem only to go to the punishment of the parents for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence: It is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year, for there was none: it was against the intention of both parties that it should affect the settlement; and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated; there was no fraud intended, because there was no agreement; nor did the master mean either to prevent or promote the settlement; but he deducts a something to leave that question open, which it was the object of other persons who were interested to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service, and it is by means of his own act that he becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement: It is well put, that had an action been brought for his wages, he could not have recovered for these four days. *Cal. Cas.* 129.

H. 23 G. 3. K. v. Seagrave. Thomas Brouk and his family were removed from *Barkby* to *Seagrave*, which was confirmed at the sessions, and the following case stated: That the pauper was hired from old *Martinmas* to old *Martinmas*; that on *September 25th* he told his master he was going to be married; that his master made no answer; that he went on *Saturday* and was married; that upon his return he had no intention of quitting his service; that the master said he would not employ him any longer; that he said he would go if he would pay him his year's wages; that the master refused it, and said he would only pay him for the time he had served, and asked him if he would take his wages, or go before a justice; that his master set out about his business to his farm, when the pauper called him back, and said he would take the money for the time he had served, and that he parted with his own consent.—The court thought that the last words of the case as stated were

so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued. Both orders quashed. *Cald. Caf. 247.*

E. 23 G. 3. K. v. Wintersett. George Challenger was removed from *Wintersett* to *Stainburgh*. The sessions quashed the order, and stated the following case: That the pauper was hired at *Barnsley* statutes, which are held a few days before *Martinmas*, to *Thomas Oundsworth* of *Stainburgh* for one year, received 1s. for his gods-penny, and was to have three guineas wages; that the very night of the hiring, the pauper fell ill, and continued sick and unable to go, and did not go into his service till a month after *Martinmas*; when the pauper and his mother went to the master's house, who, being from home, they were shewn to his wife, who complained that the pauper had not come to his service according to the agreement, and therefore refused to receive him: whereupon the pauper's mother said, "we must fall into your will for wages, and take what you will allow us;" and left the pauper in his service, where he continued until *Martinmas* following; when the mother was sent for, and received for forty-eight weeks wages after the rate of 1s. 2d. per week; being less than the rate of the original wages. By *L. Mansfield*: The service had never commenced under the first contract; if it had, no doubt the master must have supported him in his sickness. But that is not the question; the point is, that the agreement acted upon here was a fresh agreement when he recovered from his sickness; and the beginning of his service was then. Under the former the mistress refused to receive him. Then considering the old contract at an end, the actual service was but for eleven months; that is, to the *Martinmas* next; and the submitting to the abatement of the month's wages at the end of the year is an affirmation of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the legal or constructive service; it shews also that there was no hiring for a year; so that both the hiring and service must be considered as imperfect and ineffectual.—*Buller J.* If a servant is taken ill after the service has commenced, the master is bound to support him, and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before *Martinmas* to commence at *Martinmas*; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced. Order of sessions quashed, and the original order affirmed. *Cald. Caf. 298.*

H. 26 G. 3. K. v. Gresham. On a rule to shew cause why an order of sessions of the city and county of *Norwich*, confirming an order of two justices, should not be quashed. — The case stated, That *William Thompson* was settled at *Gresham*, when he hired himself for a year at the wages of 3l. to Mr. *Creemer* of *Besson Regis*; that he duly entered upon his said service, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down fifteen shillings, which the pauper took up, and went away to his father's house in *Norwich*, where he continued for six days, during which time he looked upon himself as a free man: That the pauper then returned at the request of his master, and continued in the service to the end of the year, when he received forty-five shillings, being the remainder of his wages agreed for at the hiring. — By *L. Mansfield*: The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: The master insists upon turning him away, and pays him down all his wages that were due; the consent on the other side is by taking the money up; then how does he come back again? It is upon the request of the master: There is nothing by which the absence can be explained. The meaning of *purging an absence* is where the act itself is doubtful. — Rule discharged. *Caf. by Durnf. and East, 101.*

T. 30 G. 3. K. v. Grantham. *William Read* and his wife were removed from *Allington* to *Grantham*. The sessions confirmed the same, subject to the opinion of the court on the following case: *Read* was hired a fortnight after *Martinmas 1784* by *N. Leadenham* of *Allington*, for a year, and entered upon his service, and continued therein about six weeks, when, with his master's leave, he went to assist his father, who was ill, where he stayed thirteen weeks; when he returned in consequence of a warrant having been obtained against him at the instance of his master, into his service under the original contract, and continued therein until *Sunday evening*, three days before the end of the year, when his master came home in liquor and abused him, threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night in *Allington*, and the next morning his master would have had him return to his service, and stay out the year, but he refused to go again, and threatened, that unless he paid him the

the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year's wages, deducting for the thirteen weeks he was with his father; which he took, and then left his service, *contrary to the express request of his master.* —*L. Kenyon Ch. J.* The circumstance stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose that there was some fraud intended on the part of the master; but none is stated. It has been said, and rightly so, that an *actual* service is not necessary, for that a *constructive* service is sufficient: but the question here is, whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or the end of the year. And it has been argued that this was an absence for a reasonable cause, on account of the ill-treatment of the master; but here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill-used, though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered by saying, that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day or three days may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus penitentiae*; for both the master and servant agreed to put an end to the service. The master wished to turn away the servant, though unwarrantably; and though the latter was not bound by such ill-treatment, he afterwards consented to dissolve the contract. *Albhurst J.* concurred. Both orders confirmed. *Darnf. and East, 3 V. 754.*

M. 31 G. 3. K. v. Claydon. Two justices removed the pauper from *Claydon* to *Usculm*. The sessions quashed the

the order, and stated as follows: That the pauper being settled at *Uffculm*, agreed with *W. Hodges* in *Dunkeswale* for a year, at the wages of 2l. 15s. and served till nine days before the end of the year, when on a *Sunday* morning he went away in order to get another place when his year should be up, without asking any leave of, or mentioning it to his master; he returned on the *Tuesday* following about six o'clock in the morning, when he asked his master what work he should go about; the master told him he might go and serve the master he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed. He then went away and did not afterwards return: *he wished to have stayed out the year, but his master would not let him.*—*L. Kenyon* Ch. J. It is now too late to say that a *constructive service*, pursuant to a hiring for a year, will not confer a settlement, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year.* The cases of *K. v. Iffip* (a), and *K. v. Maddington* (b), which have been relied on, do not govern the present. In the former, the servant did not return until after the expiration of the year; and the facts of that case left the question open whether or not the relation between the parties subsisted during the whole year: The court there thought that the master improperly refused his consent, and that though the servant were not in the actual discharge of his duty in his master's house; yet as he was liable to be called into his master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that; because, during the continuance of the year a further act was done; when the servant returned after his absence, the master not only found fault with him, but refused to take him again into his service: it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer under the control of the master. In *K. v. Iffip* the servant was under the master's

(a) *Ante*, this same title.(b) *Ante*, under this head.

control during the whole year ; he was liable to be called into the master's service whenever the master thought proper ; but here the relation between the master and servant was rescinded before the end of the year by the act of both parties ; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *K. v. Maddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract : afterwards, indeed, when the master paid the wages, he deducted a part of them ; but he could not by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But the case of *K. v. Gresham* (a) is extremely like the present ; there the court held, that by the act of accepting the wages, the servant agreed to put an end to the contract. I am therefore of opinion that there could be no *constructive* service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year.—*Ashburn J. (b)* and *Grose J.* concurred. Order of citations quashed. *Durnf. and East, 4 V. 100.*

[* * The following case belongs to the section "What shall be deemed absence with leave during the service," and should have been inserted in the preceding sheet, page 509, after the case of *K. v. St. Andrew's Holborn.*]

T. 32 G. 3. K. v. East Shefford. J. Mills and his wife were removed from *East Shefford* to *Welford, Berks.* The sessions quashed the order, and stated the following case: The pauper was hired by one *Birch* of *Welford* for a year, at four guineas wages ; he accordingly went to his service on the day appointed, and continued there eight weeks, when he ran away and was absent thirteen weeks, during which time he worked with and received wages from another person. *Birch* then apprehended him by a warrant ; but in his way to a justice, asked him whether he would come back to his place, or go to prison ? and if he would come back, and go on in his place as he ought to do, he might. The pauper said he would come back ; and his master asked him then, what he should be willing to abate for the time he had been absent ? The pauper said, he thought one shilling a week would not hurt him, which was agreed to ; and the pauper returned into his service, and continued till the end of his year, when he received all his wages, except the 13s. which had been agreed to be deducted.—*L. Kenyon Ch. J.* If the old contract were dissolved when the servant absented himself,

(a) *Ante*, under this head.

(b) *Buller J.* was absent.

and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, whether the service after the pauper's return were performed under the old or new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: But as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them; though if the question were now to arise for the first time, perhaps we should make a different determination. It has been decided that absence at the beginning, the middle, or the end of the year, may be dispensed with, either with the consent of the master or for an excusable cause. In *K. v. Hanbury (a)* it was held, that an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now it is impossible to distinguish this case from that in principle. It has been said however that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably, if the first case after the statute had arisen upon an absence of thirteen weeks, the court would have started at the question: but the court have gone on step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say, that this pauper gained a settlement at *Welford* by hiring and service; for on his return he was received again into his master's service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master's object in apprehending him by a warrant, was to compel him to complete the service under the old contract.—*Buller and Grose* Justices of the same opinion. Order of sessions quashed. *Durnf. and East, 4 V. 804.*

Places ex-
empted.

By the 13 G. 2. c. 29. Servants in the *Foundling hospital* shall not by such service gain any settlement in the parish where the said hospital is situate.

And by the 9 G. 3. c. 31. Servants in the *Magdalen hospital* (established for the reception of penitent prostitutes) shall not by such service gain any settlement in the parish where the said hospital is situate.

vii. Of settlement by marriage.

What shall be
deemed a suffi-
cient marriage.

Heretofore it hath been somewhat doubtful, what shall be deemed a sufficient marriage, so as that a woman shall

(a) *Post*, this same head.

gain

gain a settlement thereby ; and the courts have been favourable in admitting marriages, although not strictly solemnized according to the laws of the church ; but now by the statute of the 26 G. 2. c. 33. a great distinction is made between marriages solemnized before the 25th day of March 1754, and after that time : for by the said statute it is enacted, that after March 25, 1754, all marriages (except in Scotland, and except the marriages of jews and quakers, where both the parties are jews or quakers respectively), which shall be solemnized without licence or publication of banns, or in any other place than a church or publick chapel wherein banns of matrimony have been usually published (unless by special licence from the archbishop of Canterbury), or without the consent of parents or guardians (where either of the parties, not being a widower or widow, is under the age of 21), shall be null and void to all intents and purposes whatsoever. As in the case of *Chilham and Preston*, M. 33 G. 2. Two justices removed *Edward Young*, *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston* near *Faversham*, both in *Kent*. And the sessions confirmed, in all points, the order of the two justices. The case, as stated to appear to the sessions, was, that the said *Edward Young*, being legally settled in *Preston*, (and not being then a widower,) was on the 25th of *January* 1758, without the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury* (who was settled in the said parish of *Tenham*, and who is removed to *Preston* by the said order, as the wife of the said pauper) ; the said *Edward Young* being then an infant of 20 years ; and that afterwards, the said *Rebecca* was brought to bed in the parish of *Chilham*, of the said *Mary*, removed by the order. It was argued in support of these orders, that the word *void* in the act may be construed *voidable* ; and that it is highly unreasonable, that a virtuous young woman and her innocent children should be turned adrift, and be considered as a whore and bastards, without having any opportunity to contest so severe a judgment against them : Therefore that this marriage ought to be avoided by a sentence in the ecclesiastical court ; and not in a collateral method, by an *ex parte* order of justices, made without hearing them or any person on their behalf.—By *L. Mansfield* Ch. J. This point will admit of no manner of doubt. There is this plain distinction between things *void* and *voidable*. Where the law makes a thing void for the benefit of the parties concerned, they may waive that advantage if they please. But the marriage act is avowedly made against

both the contracting parties, and therefore they shall not waive the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute.—And by the whole court: Let the order be quashed as to *Rebecca* and the child, and confirmed as to the pauper *Edward*. *Bur. Set. Cas.* 486. *Black. Rep.* 192.

E. 21 G. 3. King's Norton and Northfield. Two justices made an order to remove *Abigail Jones*, widow of *Joseph Jones*, from the parish of *King's Norton* to the parish of *Northfield*; which order the sessions confirmed upon appeal, and stated specially: That the pauper *Abigail Jones*, being settled at *King's Norton*, in the year 1775, intermarried with *Joseph Jones* a settled inhabitant of *Northfield*, at *Buerly-hill* chapel in the parish of *King'swinford* in the county of *Stafford*, which was erected in the year 1765, and then duly consecrated, and in which divine service had been publicly and regularly celebrated ever since; and wherein banns of matrimony had been often published, and marriages celebrated previous to the marriage in question: That the said chapel was a new one, erected since the marriage act, and not erected on the foundation of one that was ancient; and no act of parliament was obtained for erecting the said chapel, or for celebrating marriages there. The two orders being removed into the court of king's bench, the question was, Whether the marriage was void by the provisions of the said act?—On shewing cause, it was contended that the words *usually published* in the act ought to be considered to mean, usually at the time when the marriage in question took place. If so, there was enough stated in the case for the court to consider this as a chapel in which banns had been usually published. The word *often* is nearly tantamount to *usually*; but if it were not, yet as it is a rule that an order of sessions is always to be supported, unless something appears expressly on the face of it which shews it to be against law, the court would intend this to be such a chapel as the act required, there being no direct assertion to the contrary. If the construction contended for on the other side should prevail, this act would prove a trap to clergymen and innocent persons, who could not be expected to search into history, to discover the exact time when marriages first began to be celebrated in any particular chapel. It is hard perhaps to draw a line; but here, an usage was clearly established long before this marriage took place.—Against the validity of the marriage, it was argued, that the act is to be construed

construed as if the case had happened the day after it had passed. Usage *since* cannot vary the case. Arguments of hardship and inconvenience can only be resorted to, when the law is doubtful; but here the words of the statute are clear. This is no more a trap than any other prohibitory law. After the passing of the act, no marriages have been attempted to be celebrated in *Lincoln's-Inn* chapel, *Gray's-Inn* chapel, and many others, although they are old chapels, because banns had not been usually published in them; and it would be absurd, if a chapel erected since the act should be in a better situation in that respect than those which had existed before.—*L. Mansfield*: I was for some time averse to determine a question of such serious consequence in a collateral way, on a settlement case. But upon more consideration, I think we ought now to decide it. If there has been an abuse, we ought to stop it as early as possible. A delay might lead to a supposition that we doubt, when in truth we do not. The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. *Douglas*, 634. *Cal. Cas.* 115. [Soon after this determination was known, an act was passed 21 G. 3. c. 53. for making all marriages which had been solemnized in any parish church or publick chapel erected since the statute of the 26 G. 2. and consecrated, valid in law, and to exempt the clergymen who had solemnized such marriages from the penalties of that statute.]

H. 26 G. 3. Stanton upon Hine Heath and Hordnett. *Mary Miles* and *Ann* her infant daughter were removed from *Stanton* to *Hordnett*. The sessions confirmed the order, and stated the following case: That *Mary Miles*, an illegitimate child, was born at *Hordnett*; that she was married on the 10th *January* 1782, she being then under 21 years of age, to *Richard Teece*, who was born at *Stanton*, and was also under 21 years of age, and illegitimate; that his putative father died in 1779, and his mother in 1764. The putative father of *Mary* died several years before her marriage, and her mother in 1772 married *Richard Lowe*, who as well as his wife are still living. Neither *Richard Teece* nor *Mary Miles* had ever any guardians appointed, nor was any consent given to their marriage by any person acting in that character, nor by the parents on either side; but the said *Richard Teece*, who applied for a licence, swore that the parties were both of age.—The question for the opinion of the court turned on the validity of this marriage.—After hearing counsel on both sides, *L. Mansfield* said, the question is, What is the law? The meaning of

of the act [26 G. 2. c. 33.] is, that where there is the consent of a father, or guardian lawfully appointed, or of a mother, or guardian appointed by the court of chancery, the marriage shall be valid; but here there was no consent by any one, consequently, in my opinion, it is void by the marriage act. There is no reason to except illegitimate children, for they are within the mischiefs intended to be remedied by the act. By the court: Both orders confirmed. *Cases by Durnf. and East*, 1 V. 96.

**Marriages in
Scotland.**

THE passage into *Scotland* being left open by the act, many persons have found their way thither to be married, in a manner very clandestine and irregular. And there hath been diversity of opinions concerning the validity of such marriages.

Lord *Stair*, in his *Institutions of the Law of Scotland*, page 26, says, "The publick solemnity of marriage, is a matter of order, justly introduced by positive law, for the certainty of so important a contract; but not essential to marriage. Thence arises the distinction, of publick or solemn, and private or clandestine marriages. And although persons who act contrary thereto may be justly punished (as in some nations by exclusion of the issue of such marriages from succession), yet the marriage cannot be declared void and annulled; and such exclusions seem very unequal against the innocent children. But by the custom of *Scotland*, cohabitation, and being commonly reputed man and wife, validates the marriage, and gives the wife right to her thirds, who cannot be excluded therefrom, if she was reputed lawful wife, and not questioned during the husband's life, till the contrary be clearly proved."

Mr. *Erskine*, in his *Principles of the Law of Scotland*, pages 62 and 64, says, "It is not necessary that marriage be celebrated by a clergyman. The consent of parties may be declared before any magistrate, or simply before witnesses. When the order of the church is observed, the marriage is called regular; when otherwise, clandestine. Towards a regular marriage, the church requires proclamation of banns in the churches where the bride and bridegroom reside. Formerly, not only bishops, but presbyteries, assumed a power of dispensing with proclamation of banns on extraordinary occasions: but this hath not been exercised since the revolution."

In *M'Douall's Institute of the Law of Scotland*, vol. 1. p. 112. he says, "Marriage is perfected by sole consent; for carnal knowledge is only the consummation of it. Marriage is either solemn or clandestine. A solemn marriage

riage is that which is celebrated by a minister of the established church, or one having the benefit of the toleration act, after due proclamation of banns. This ought regularly to be done three several *Sundays*, in the churches respectively where the parties frequent divine service; but if they belong to an episcopal meeting, it must be done in their congregation, and likewise in the parish churches where the parties reside; and in case the minister of such parish shall neglect or refuse to publish the banns, it is declared sufficient, if done in the episcopal congregation alone. But the publick solemnity is only a matter of order, and not essential to marriage; and therefore by the law of *Scotland*, not only a marriage solemnized by any minister or priest is good, but likewise cohabitation as man and wife, sufficiently ascertains the marriage, not called in question during their joint lives. Those marriages which are not solemnized according to the order of the church, are termed clandestine. Notwithstanding that clandestine marriages are equally binding with solemn ones, certain penalties are imposed upon the parties, who thereby act contrary to the order of law; these are, imprisonment for three months and a penalty upon the parties, with perpetual banishment or other arbitrary punishment upon the person that solemnizeth the marriage. Of old, the parties lost their respective interests of *jus mariti* and *jus relictae*; but that afterwards was altered. Persons residing in *Scotland*, who marry in *England* or *Ireland*, without proclamation of banns in due course, are subject to the pains of clandestine marriages. And the witnesses to an irregular marriage are subject to a fine."

But whether clandestine marriages in *Scotland*, of *English* parties, who resort thither to evade the *English* law, shall be sustained in *England*, hath been doubted. And very learned men have questioned, notwithstanding that such marriages are valid by the law of *Scotland*, whether they are effectual in *England*. Where parties are bound, by the laws of their own country, to execute any important act or contract with certain solemnities; it is doubted whether they can elude their own law, by going purposely to another country where such solemnities are not essential, and then returning immediately when the act is done. It is a question of publick law; and the most celebrated writers on publick law have holden that such an act is fraudulent; it is *fraudem facere legi*, which the laws of all nations disallow. In the case of *Robinson and Bland*, *M. 1 G. 3.* which was upon a security given in *France* for money there lost at play, wherein the locality of the transaction came in

in question, there is an *obiter* observation of *L. Mansfield* very remarkable. "As to the money won at play, by the rule of the law of *England*, no action can be maintained for it. To this it has been objected, that the contract was made in *France*: Therefore the law of *France* must prevail, and be the rule of determination; by which law, it is alledged, that the money is there recoverable before the marshals of *France*, who can enforce obedience to their sentences by imprisonment. I admit that there are many cases, where the law of the place of the transaction shall be the rule: And the law of *England* is as liberal in this respect as other laws are. It has been laid down at the bar, that a marriage in a foreign country must be governed by the law of that country where the marriage was had. Which, in general, is true. But the marriages in *Scotland*, of persons going from hence for that purpose, were instanced by way of example. They may come under a very different consideration; according to the opinion of *Huberus*, p. 33. and other writers. No such case hath yet been litigated in *England*, except one, of a marriage at *Ostend*, which came before *L. Hardwicke*; who ordered it to be tried in the ecclesiastical court: But the young man came of age; and the parties were married over again; and so the matter was never brought to a trial." *Burr. Mansf.* 1079.

But in *Buller's Law of Nisi prius*, p. 113. there is a short note of a cause wherein this point was afterwards determined, upon an appeal to the delegates; viz. "*Compton and Bearcroft*, 1st December 1768. The appellant and respondent, both *English* subjects, and the appellant being under age, ran away without the consent of her guardian, and were married in *Scotland*; and on a suit brought in the spiritual court to annul the marriage, it was holden that the marriage was good."

What shall be deemed sufficient evidence of a marriage, as to a settlement.

T. 2 G. 3. *Stockland and Chardland*. *John Maes* and *Elizabeth Masen*, father and mother of the pauper, being both resident in the parish of *Chardland*, about the year 1723, went from thence together, declaring they were going to be married; and soon returned, declaring they had been married: And from thenceforward cohabited as man and wife for about 30 years, until the death of the said *Elizabeth*. The pauper was born at *Chardland* in 1725, and there baptized, and his baptism registred as the son of *John and Elizabeth Maes*. The said *John and Elizabeth*, some years before the death of the said *Elizabeth*, removed from the said parish of *Chardland* to the parish of *Stockland*, and there acquired a settlement by renting a tenement of

50 l. a year. They carried with them, from *Chardland* to *Stockland*, the said pauper their son, whose settlement depended upon this question, Whether the said *John* and *Elizabeth*, the father and mother of the pauper, were to be considered as husband and wife at the time of his birth? It was contended at the sessions, that the said *John* and *Elizabeth* were never married; or if they were, that the said *Elizabeth* had a former husband then living. Concerning which, several witnesses having been examined on both sides, the said *John Moss* the father was produced, in order to prove that he and the said *Elizabeth* were never married, and that the supposed other husband was then living. But the court refused to receive his testimony. And on consideration of the evidence before the court, they were of opinion that the marriage of *John* and *Elizabeth* was sufficiently proved, and that the pauper gained a settlement at *Stockland*, as part of their family, and discharged the order of the two justices for removing him to *Chardland*. It was moved to quash the order of sessions. The objection was, that they ought to have admitted the father to give evidence of his never having been lawfully married. But *L. Mansfield* seemed to think, that 30 years cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon. However, a rule was made to shew cause. But on the last day of the term the objection was given up; and, by consent, the order of sessions was affirmed, and the recognizance discharged. *Burr. Settl. Cas.* 508.

E. 2 G. 3. St. Devereux and Much Dewchurch. The question before the sessions was, Whether the marriage of *John* and *Susannah Meredith* was sufficiently proved? One witness made oath, that he and another witness were present on the 7th day of *February* 1758, when a marriage was solemnized in the parish church of *St. Devereux* between the said *John* and *Susannah Meredith*, by the minister of the said parish by banns. And it appearing to the said sessions, that the entry of the said marriage in the register book of the said parish was made in manner following, viz. "1758. *John Meredith* and *Susannah Jenkins* were married by banns," but neither the minister, parties, nor witnesses signed the said entry, and that no other entry of the said marriage was ever made, they therefore were of opinion, that the marriage was not legally proved. On shewing cause, it was urged in support of their opinion, that this appeared, upon the state of the case, to be a void marriage. For although the omission of banns was originally only an offence against the ecclesiastical

ecclesiastical law, and even after the 7 & 8 W. c. 35. s. 2. the minister and clerk and man married without licence or banns were only subject to a penalty; yet since the act of the 26 G. 2. c. 33. an entry of this, properly signed, is become so essential a circumstance, that without it the marriage itself is null and void. But the court were of a different opinion. And *L. Mansfield* said, It was not incumbent on the persons married, to prove that the banns were published, nor doth the entry directed to be made affect the validity of the marriage. In a suit perhaps in the ecclesiastical court for jactitation of marriage, it may be necessary to prove that all the solemnities of the marriage act have been punctually and regularly complied with: But God forbid that in other cases (the legitimacy of children and the like) the usual presumptive proofs of marriage should be taken away by this statute. It was canvassed in parliament, at the time when the act was made, and universally agreed by all whose opinions were worth having, that it would not become necessary to prove the publication of banns. But at the same time he declared, that it was a matter of great publick concern for the preservation of pedigrees (which were now become very difficult to prove): And the entry ought to have been made according to the directions of the act. He went so far as to declare, that an information ought to be granted by the court against the minister for omitting it, if it should appear clearly that it was owing to his neglect; and that such information should be prosecuted by the attorney general at the king's expence; which he did not doubt would be readily directed, upon the recommendation of the court. And he ordered the fact to be further inquired into. And it came out that a regular entry had been made; and that which was produced to the justices, was only a minute or memorandum. So the minister was justified. *Burr. Settl. Cas. 506. Black. Rep. 367.*

Finally, In the case of *Morris and Miller, E. 7 G. 3.* On an action for criminal conversation with the plaintiff's wife, the question was, whether, to support the action, there must not be proof of an actual marriage? The fact was, they were married at *May-fair* chapel. The register or books could not be admitted in evidence. *Kaib*, who married them, was transported; and the clerk, who was present at the marriage, was dead. So that the plaintiff could not prove the actual marriage by any evidence. But the counsel for the plaintiff proved articles between the man and his wife, made after marriage, for settling of the wife's estate, with the privacy of relations on both sides. They proved cohabitation, name, and reception of her by every

every one as his wife, and insisted that this evidence is admissible; and that lately in ejectment, before *L. Mansfield*, this sort of evidence was offered and received. Unto which, *L. Mansfield* said, It certainly may be done so, in all cases except two: One is in prosecutions for bigamy; and this case (if such proof cannot be here received) is the other. It was proved further, that the defendant *Miller* confessed to the landlord of the lodgings, that she was captain *Morris's* wife, and that he the defendant had committed adultery with her: And confession is the strongest evidence.—*L. Mansfield*: I do not, at present, remember any action for criminal conversation, when an actual marriage was not proved. Proof of actual marriage is always used and understood in opposition to proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred: But we will take time to consider of it. Afterwards, he delivered the resolution of the court: In these actions there must be proof of a marriage in fact, as contrasted to cohabitation and reputation of marriage arising from thence. Perhaps there need not be strict proof from the register, or by a person present; but strong evidence must be had of the fact, as by a person present at the wedding dinner, if the register be burned, and the minister and clerk are dead. The case of bigamy is stronger than this. And on an indictment for that offence *Denison J.* on the *Norfolk* circuit, ruled, that though a lawful canonical marriage need not be proved, yet a marriage in fact (whether regular or not) must be shewn. But except in these two cases, I know of none, where reputation is not a good proof of marriage. *Burr. Mansf.* 2057. *Black. Rep.* 632.

It seemeth to be a good general rule, that a woman marrying a husband who hath a known settlement, shall follow the husband's settlement. And although in the case of *Upbottery* and *Dunkswell*, *M. 1 G.* it was held, that the wife shall not gain a settlement with the husband, until she hath lived with him 40 days unremoveable as part of his family; yet afterwards, in the case of *K. and Pinceborton*, *M. 3 G.* it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's* and *Everly Blackwater*, *H. 10 G.* the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement

Wife shall follow the husband's settlement.

tlement since his death. *Caf. of S. 89. 1 Sess. C. 10. 2 Sess. C. 112.*

Wife can gain
no settlement
without her
husband.

It seemeth also to be agreed, that a wife can gain no settlement separate and distinct from her husband, during the coverture. As in the case of *Aythrop Roding* and *Whiss Roding*, *M. 30 G. 2.* (hereafter following); where the wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided: it was held, that although she might not be removed from thence, yet (her husband being living) she could not thereby gain a settlement.

Husband dead,
and his place of
settlement not
known.

It seemeth also to be agreed, that a woman marrying a husband that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement continues to her during the coverture, or it is suspended during her coverture, and only revives after the husband's death. Which point includes in it this question, Whether the parish where the woman was last legally settled before marriage, shall by barely proving such marriage, avoid the settlement with them during the husband's life? or whether, in order to avoid such settlement, it is not also necessary for them to prove, that such woman hath gained another settlement, that is to say, that the husband hath a settlement, and where?

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

E. 2 G. St. Giles's and St. Margaret's. A woman marries a foreigner; and her husband dies. By the court: She must be sent to the place of her settlement before marriage. *1 Sess. C. 97.*

H. 12 G. K. and Chidingstone. It was stated, that a single woman, settled at *Chidingstone*, was married to a man who is since dead, but his settlement did not appear. And by the court, Her settlement before marriage stands. *Str. 683.*

M. 1 G. Uphottery and Dunkswell. A woman is settled in *Dunkswell*; and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uphottery*, and dies there. Two justices remove the widow to *Dunkswell*, where she was settled before marriage. And by the court: Where it appears that the husband in his lifetime had no legal settlement as can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement. *Caf. of S. 89. 1 Sess. C. 80.*

Hitherto the cases seem to be agreed, being that the husband is dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged.

M. 12 An. Dunsfold and Wilsborough Green. A woman who was settled at *Wilsborough*, marries *Archibald Player*, a *Scotchman*, who had gained no settlement in *England*. Two justices removed her from *Dunsfold* to *Wilsborough*, the place of her settlement before marriage. Exception; this is a married woman, and by her marriage she ought to be settled where her husband was, and this cannot be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *El. c. 4. s. 6*. The court held, though she was a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at *Wilsborough Green* as at *Dunsfold*. *Foley*, 249. *Caf. of S. 31*.

Husband living but having no known settlement in *England*.

Note; the act of the 39 *El.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

M. 3 G. St. Giles's and St. Margaret's. *Sarah Etherington* was settled at *St. Giles's*; and marries an *Irishman*. By the court: The marriage will not put her in a worse condition than she was before; and they held that she continued her settlement, notwithstanding her marriage. *Caf. of S. 98*.

H. 12 G. K. and Westerham. The order specially stated by the sessions was this: It appeared to the court, by the testimony of *Elizabeth Pinchen*, that she was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pinchen*, who was born in *Wiltshire*, but in what place or parish he had a settlement, he never informed her, nor doth she know; but that he is run away, and still living, for what she knows. By the court: Whether the husband be living or dead, signifies nothing. For unless it appears that he has a settlement, the woman must be sent to the place of her settlement before marriage: for supposing the husband was born upon the high seas, or in *Ireland*, or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved. *Foley*, 252. *Burr. Sett. Caf. 368*.

On the contrary, *H. 12 G. 2. Stretford and Norton*, the case was thus: An *English* woman married an *Irishman*

who had no settlement in *England*. He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by *Lee Ch. J.* It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband has or has not a settlement; for otherwise the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases, viz. *T. 1 G. Hanway and Marston*. It was there declared by the *Ch. J.* that the settlement of a woman, who married a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because an husband and wife being as it were but one person, cannot be parted. *T. 9 G. Shadwell and St. John's Wapping*. One *Ridley*, a vagrant, having no settlement, married a woman who had a settlement in *St. John's Wapping*, and had four children by her born in *Stepney*. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband. *Andr. 307. 2 Sess. C. 185. 19 Viner, 376. Burr. Sett. Cas. 122**.

Finally,

* Sir *James Burrow* says, he doth not find the case of *Shadwell* and *St. John's Wapping* in any printed book or manuscript: But it seems (he says) to be the same case which he had heard reported in the form of a catch, to the following effect:

A woman having a settlement
 Married a man with none:
 The question was, he being dead,
 If that she had, was gone?
 Quoth Sir *John Pratt*†—Her settlement
 Suspended did remain,
 Living the husband: But, him dead,
 It doth revive again.

Chorus of *Puisne Judges*—

Living the husband: But, him dead,
 It doth revive again.

† Then lord chief Justice.

Finally, in the case of *St. John's Wapping* and *St. Botolph's Bishopsgate*, H. 28 G. 2. it was adjudged as follows: *Eleanor Kinley* having gained a settlement in *St. Botolph's* parish by hiring and service, afterwards married *Thomas Kinley* an *Irishman*, who had no settlement in *England*. About two years ago, the husband entered on board a man of war bound for the *West Indies*, but *Eleanor* about two months ago heard he was living; and the question was, Whether her settlement which she had before marriage, ceased, or was in suspense, during the coverture, and she should be looked upon as a casual poor; or she should be sent to the place of her settlement before marriage? After full consideration, *Rider* Ch. J. delivered the opinion of the court: 1. It is certain *St. Botolph's* was once her settlement, and that is not disputed. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired; and there is no case to be found, where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, Whether she gained any new settlement by marriage, but whether her old settlement was discontinued by her marriage with a person that had none? It is absurd to say, she shall lose her own, without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already. I must own the above case of *Stretford* and *Norton* is not to be distinguished from the present, and is against our present opinion. To be sure we must have great regard to former resolutions in this court; but we must judge upon the cases before us. How that case came to be determined so, I do not know, but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains; having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him. *Burr. Settl. Cas.* 367.

H. 9 G. *St. Michael's* and *Nunny*. Order of removal, reciting that the wife of a poor person who is now living had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St. Michael*, she is therefore removed thither. It

Whether the wife may be removed without the husband.

was moved to quash the order, because it did not appear the husband was at the time of the removal in the parish of *St. Michael*, so that it may be, they sent the wife away from the husband. But by the court: We cannot intend he was not; if he was in the parish from which she was sent, that indeed would vitiate the order; for the wife cannot be removed from her husband: but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed. *Str. 544. Burr. Settl. Cas. 815.*

M. 14 G. 2. Ironaeton and Painewick. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King* had intruded into *Painewick*, two justices removed her to *Ironaeton*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order. It was moved to quash these orders. The objection was, that the wife was removed without the husband, and that this amounts to a divorce between the man and his wife. But the court over-ruled the objection; for how doth it appear that the husband was not at *Ironaeton* at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of. *Burr. Settl. Cas. 153.*

H. 14 G. 2. K. and Higher Walton. Two justices make an order to remove *Mary Bennet*, wife of *Samuel Bennet*, to *Higher Walton*, which they adjudge to be the place of her last legal settlement. And the sessions confirm that order. It was moved to quash these orders: for that it doth not appear, whether it was this woman's settlement in her own right, or in the right of her husband. And nothing shall be intended. Now, if it was not her settlement in right of her husband, the justices had no power to send her thither. By the court: It is adjudged to be her last legal settlement. And she could not be settled but where her husband was. And we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *Higher Walton*. And the motion was denied. *Burr. Settl. Cas. 162.*

T. 15 G. 3. Hylindswain and Carleton. Two justices remove *Johanna*, wife of *Simon Mac Owen*, and their four children, from *Floylandswain* to *Carleton*; stating in their order, that complaint was made to them by the churchwardens and overseers of the poor of *Hylindswain*, that *Simon Mac Owen*, *Johanna* his wife, and *Mary*, *Margaret*

Elizabeth, and *John*, their children, came to inhabit in *Hoylandswain*, not having gained a legal settlement there ; and that the said *Simon Mac Owen* is an *Irishman*, and hath done no act in *England* whereby to gain a legal settlement, and that his said wife and children are actually chargeable to *Hoylandswain* ; which complaint they adjudge to be true, and that the last legal settlement of the said *Johanna* the wife of the said *Simon Mac Owen* and of their said children is in *Carlton* ; and therefore they remove them thither. The sessions upon appeal confirm that order, and state specially : That *John Tyas*, father of the said *Johanna*, in the year 1727, came with a certificate from *Carlton* to reside in *Hoylandswain*, and during his residence there, his daughter *Johanna* was born, and continued to live with him there until she was upwards of 21 years of age : That she afterwards took a house at *Hoylandswain*, and resided therein until she was married to the said *Simon Mac Owen* ; who, upon his marriage, went to reside with the said *Johanna* his wife in her said hired house, and continued to reside with her therein from the time of their said marriage, which was in *September* 1766, until she and the said children were removed under the said order, from the said *Simon Mac Owen*, and from his said dwelling-house wherein he then lived, and still continues to reside : That the said *Simon*, from the time of his said marriage, followed the business of a cloth-dresser, and thereby maintained himself, and his said wife and family, until a little time before the said order of removal was made ; when his said wife and children being taken ill of a fever, she applied to the overseers of *Hoylandswain* for relief, and she was not recovered at the time she was removed, and could hardly ride. — It was moved to quash these orders, and objected, that this would occasion a separation between husband and wife ; and amount, in edict to a divorce. The husband continues to live and reside in *Hoylandswain*, and acquires his living there by his labour and industry. His wife cannot be sent from the parish where he is resident, as was agreed in the case of *St. Michael's* and *Nunny (a)*. — On shewing cause, it was argued, that by the certificate act, the parish granting the certificate is bound to receive the person certified for, together with his or her family, whenever they shall happen to become chargeable : That *Johanna* has gained no settlement since her birth ; she could gain none, by her marriage, for her husband had none himself. Her former settlement

(a) *Ante*, under this head.

is not suspended by her intermarriage with a man who had none. It remains, and is communicated to her children. And the sending her to *Carlton* doth not separate her from her husband; for he may go to her there. He ought not to remain in *Heylandswain*. He hath as much right to be in one of these places as in the other. And for this was cited the case of *St. Botolph's Bishopsgate (a)*. But the court were clear, that the removal was wrong. It is not like the case of the husband being dead, or having left his wife. Here, the husband is alive; resides at *Heylandswain*; follows the business of a cloth-dresser there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish have had the benefit of this labour nine years. The man is settled in a house, and carries on business in this place. There may be no business for a cloth-dresser at *Carlton* at all. Or this man may have no acquaintance there. He may starve there, though he could maintain his family at *Heylandswain*. It is a cruel behaviour.—And both orders were quashed. *Burr. Sett. Cas.* 813.

H. 18 G. 3. Chesbunt and Hinksworth. Two justices removed *Sarah*, calling her in the order, the wife of *Joseph Griffin*, and five of her children, from *Chesbunt* to *Hinksworth*, in the husband's absence, and without having examined him. The order was not appealed against. The husband soon after went to his wife and children at *Hinksworth*, from whence they were all sent back under a new order to *Chesbunt*. The parish of *Chesbunt* appealed against this order, and producing the former order, insisted it was conclusive as to the husband, as well as the wife and children. The sessions however, after hearing evidence as to *Griffin's* settlement, confirmed the new order as to him, and quashed it as to the wife and children. The wife then went back with her children to her husband at *Chesbunt*. After which, a third order was made, removing the children again to *Chesbunt*. This was likewise appealed against, and confirmed as to all but two of the children who were under seven years of age, as to whom it was quashed.—By *L. Mansfield*: There is nothing in this case. It is admitted, that if they had put into the first order, that it was the husband's settlement, that would have been conclusive; and the omission makes no difference. The general rule is, that the husband's settlement is the settlement of the wife.

(a) *Ante*, under this head.

There are some special exceptions ; as where the husband is beyond sea. But the presumption is in favour of the general rule ; and if this had been the case of an exception, it ought to have been stated. And the rule was made absolute to quash all the orders but the first. *Douglas*, 46. *Cal. Caf.* 42.

M. 19 G. 3. Ewell and Leigh. Two justices removed a married woman and her child, from *Ewell* to *Leigh*, in the absence of the husband. On appeal this order was quashed. The husband afterwards returning to *Ewell*, he, together with the wife and child, were removed under a new order to *Leigh*; which last order the sessions confirmed. But upon a *certiorari* and a rule to shew cause why it should not be quashed, the counsel gave it up as not to be supported since the determination of the aforesaid case of *Chesbunt* and *Hincksworth*. *Douglas*, 45. *Cal. Caf.* 59.

H. 18 G. 3. K. v. Ryton. Sarah Kidson and her child were removed from *Winlaton* to *Ryton*. The sessions confirmed the order, and stated the following case:—That the order of removal was in the words following : *Durham*, to wit, to the churchwardens, &c. Upon the complaint, &c. of *Winlaton* unto us, &c. that *Sarah Kidson* the wife of *Benjamin Kidson*, a soldier in his majesty's regiment of foot called *Young Buffs* now in *America*, and *Hannah* their daughter aged about 23 weeks, have come to inhabit, &c. &c. we do adjudge that the lawful settlement of them the said *Sarah Kidson* and her said child is in the said township of *Ryton*. We do therefore require, &c. By virtue of which said order the paupers were removed to *Ryton*, who gave notice of appeal. — *Ambler*, for the respondents, stated, that *Sarah* when a singlewoman gained a settlement in *Ryton*; that her said husband is now in *America*, and it is not known whether he is living or dead ; and that his settlement is unknown ; and therefore the pauper had been removed to her settlement before marriage. *Gyll* and *Hopper contra*, objected to the order of removal, and to the respondents going into evidence of the facts stated by *Mr. Ambler*, and prayed that the order might be quashed, as it was not therein stated that *Benjamin Kidson* was dead, nor evidence given that he was dead, nor that the place of his settlement could not be known. But the court were of opinion to admit evidence of the facts stated by *Mr. Ambler*; and the same being fully proved, discharged the appeal. — *Chambre* was to have shewn cause in support of these orders, but the court called upon the other side ; and after hearing *Davenport* in support of the rule. — *L. Mansfield*: The sessions say, that

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement.

the evidence laid before them proved that which would make the order of the two justices right; and I think that upon the evidence the court of quarter sessions did right. The other judges concurred.—Rule discharged, and both orders affirmed. *Cald. Caf.* 39.

And the same point came in question in the case of *K. v. Edifore*, otherwise *Hedfor*, *M.* 24 *G.* 3. and was determined in the like manner. *Cald. Caf.* 371.

Removing a
widow to her
maiden settle-
ment.

Likewise in the case of *K. v. Woodsford*. *H.* 23 *G.* 3. *Mary Pitman* widow, and her 4 children, were removed from *Woodsford* to *Wimbourne Minster* in *Dorsetshire*. The sessions quashed the order, and stated the following case:—That by rule of the quarter sessions in *Dorsetshire*, on all appeals against orders of removal, the appellants should begin, and in the first place shew some settlement of the pauper out of the parish appealing. In pursuance of the said rule, the appellants produced a copy of the register of the birth of *Mary Scutt* in *Affbuddle*, and she swore that *Mary Scutt* was her maiden name.—The counsel on the other side objected that this was not sufficient, but that the birth of *Robert Pitman* her husband, or some other settlement of his, ought to have been shewn, and that to identify the said *Mary* it was necessary to prove her marriage with *Pitman*.—The court adjudged, that the proof of the birth of *Mary Scutt* was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case, and quashed the order. A rule was moved for, to shew cause why the order of sessions should not be quashed, upon the ground, that the pauper having been removed as a widow, imported, that it was a removal to her late husband's settlement, and that her maiden settlement was nothing to the purpose.—But by the court, It may be the husband had no settlement; and if he had, till discovered her own would in the mean time remain. It is enough in the first instance: the sessions have done right. Motion denied. *Cald. Caf.* 236.

Marriage frau-
dulently pro-
cured.

Although it is generally true, that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good; for the following cases do proceed upon such supposition.

M. 11 *G.* *K.* and *Edwards*. The overlords were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where the husband was settled. By the court: If there is

a con-

a conspiracy, to let lands of 10 l. a year to a poor man in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed for want of averment, that the woman was last legally settled in the parish relieved by her marriage. 8 Mod. 321. 1 Sess. C. 165.

H. 6 G. 2. K. and Parkins. A single woman of *Studley*, big with child of a bastard, was sent back to *Studley*. *Parkins*, overseer of *Studley*, threatened with all the severity of the law, to force her to marry a stranger of another parish, against both his and her consent, he giving five guineas to the husband, and keeping him in liquor. By the court: Shew cause why information should not go. 1 Sess. C. 176.

M. 17 G. 2. K. and Watson. An information was granted against *Watson* and others, for procuring one *Vine* a soldier, who had a settlement in the parish of *Brill*, to marry a poor woman who was an idiot, and chargeable to the parish of *Derton*, by giving *Vine* 10 l. and a fat hog for marrying her, whereby she became chargeable to the said parish of *Brill*. 1 Wilson, 41.

T. 7 G. 3. K. and Tarrant. On shewing cause why an information should not be granted against an overseer of the parish of *Hewish*, for procuring one *Richard Few*, a poor man of the parish of *Wilcot*, to marry *Elizabeth Swanton* a single woman with child of a bastard, in order to get the bastard settled in the parish where the husband was settled:—The rule was made absolute for an information. *Bur. Mansf.* 2106.

H. 23 G. 3. K. v. Compton et al. Cockell moved for an information against the overseers and inhabitants of *Doncaster*, for conspiring to prevail upon a soldier to marry a poor woman of their parish then big with child, for the purpose of throwing her upon the township of *Kirkby*, where her husband the soldier was settled. The affidavit, as stated by Mr. *Cockell*, very strongly impeached the conduct of the defendant —By *L. Mansfield* and the court: Great inconvenience has been felt from the practice of obliging persons in low circumstances to shew cause against informations, and to come afterwards before this court from perhaps a very remote part of the country, and consequently at a great expence, to receive judgment. To be sure this appears to be a very fit subject for prosecution; but justice may effectually be done otherwise, and it will be
more

more proper in all such cases to take the common remedy, and proceed by way of indictment. Motion denied. *Cal. Cas.* 246.

[N. B. The mayor and town clerk of *Doncaster* were included in this application; but the court thought that the affidavit did not sufficiently reach them: If it had, L. *Manisfield* said, the court would have granted the rule against them.]

viii. Of settlement by continuing 40 days after notice.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under 10l. a year, two justices may remove him to the place where he was last legally settled for 40 days.

But by the 17. 2. c. 17. The 40 days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. s. 3.

And by the 3 W. c. 11. The said 40 days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which said notice in writing, the said churchwarden or overseer shall read, or cause to be read, publicly, immediately after divine service, in the church or chapel, on the next Lord's day, when there shall be divine service in the same. And the said churchwarden or overseer shall register, or cause to be registered, the said notice in writing, in the book kept for the poor's account. s. 3.

And if any churchwarden or overseer shall refuse or neglect to read, or cause to be read, such notice in writing as aforesaid, he shall (on proof thereof by the oath of two witnesses before one justice) forfeit for every offence 40s. to the party grieved, by distress, by warrant directed to the constable of the parish or town where the offender dwells; and for want of sufficient distress, the said justice shall commit him to the common gaol for one month. And if any churchwarden or overseer shall refuse or neglect to register, or cause to be registered, such notice in writing; he shall, on the like conviction, forfeit 40s. to the use of the poor of the parish or town where the offender dwells, to be levied as aforesaid; and for want of sufficient distress, then the said justice shall commit him as aforesaid, for the time aforesaid. s. 5.

After

After any person shall come to settle] But no soldier, seaman, shipwright, or other artificer, or workman in his majesty's service, shall have any settlement in any parish, port town, or other town, by delivering and publication of notice in writing, unless the same be after a dismissal out of the service. *f. 4.*

Soldiers, seamen, shipwrights, and artificers excepted.

In any tenement under 10l. a year] But this hath been always understood of persons coming to settle upon such tenement, as farmers thereof, and not where the same is their own proper estate; and therefore a man's coming to settle upon his own estate is not within the act.

A person's own estate excepted.

Where he was last legally settled for 40 days] *H. 10 G. Case of Cirencester.* It was held, that living 40 days successively was not necessary; and Mr. J. Fortescue said, that living 40 days off and on, is making the case stronger than living forty days together in a parish. *2 Sess. C. 40. Str. 579.*

Forty days residence successively not necessary.

And *H. 12 G. 2. Sowton and Sydbury.* It was admitted by the counsel, and held by the court as a point indisputable, that it is not necessary upon this statute, that the inhabitaney shall be for 40 days successively. *Andr. 345.*

Notice in writing] But persons executing a publick annual office, or paying parish rates, or being servants for a year, or apprentices by indenture, shall thereby be settled without notice in writing. *3 W. c. 11. f. 6, 7, 8.*

Exceptions where notice is not necessary.

And in general, all persons not removable may become settled equally without giving notice as with it, for the notice is only intended where the person is removeable; for if he is not removeable, the notice is to no purpose.

In writing] *H. 3 G. 2. Aldenham and Abbots Langley.* Upon a special order of sessions, it was stated, that a poor person forty years ago came into a parish and lived there ever since; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Those are not annual offices in the parish, and the *1 J. 2. c. 17.* was purposely made to avoid these constructive notices, and requires notice in writing; and therefore they held it no settlement. *Str. 853.*

Notice must be in writing.

H. 8 W. Dalbury and Foston. A person exercised the trade of a blacksmith, was publickly employed by the parishioners, by the bailiff of the lord of the manor, the vicar, and the justice. The question was, Whether this publick way of living was not tantamount to notice in

writing, which was only designed to prevent clandestine entries and living? By the court: This might perhaps have satisfied the statute of the 1 J. 2. but the 3 W. hath particularized the notice, and what shall be tantamount to it, and what not; but this is not among the particulars of the statute, and therefore is not such notice as the law requires. For this being an explanatory law, the court cannot carry the explanation farther than the statute itself hath done, though in an original law the court will make construction according to equity. *Carth.* 369. 2 *Salk.* 476. *Foley*, 114.

Notice to be published.

Publication of the notice] In the case of *K. and Chertsey*. The banns of matrimony of a poor person were published in the church; and it was insisted, that this was a notice sufficient, being in writing, and published in the church. But by the court: This is not sufficient; for the other requisites by the 3 W. must be observed; and that being an explanatory act, cannot be taken by equity. 5 *Mod.* 454.

Observations.

After all, this kind of settlement, by continuing 40 days after publication of notice in writing, is very seldom obtained; and the design of the acts is not so much for the gaining of settlements, as for the avoiding of them, by persons coming into a parish clandestinely: For the giving of notice is only putting a force upon the parish to remove. But if a person's situation is such, that it is doubtful whether he is actually removeable or not, he shall by giving of notice compel the parish either to allow him a settlement uncontested, by suffering him to continue 40 days; or, by removing him, to try the right.

ix. Of settlement by paying parish rates.

By the 13 & 14 C. 2. c. 12. *Forty days inhabitancy shall gain a settlement*: By the 1 J. 2. c. 17. *Such 40 days are to be reckoned from the delivering of notice in writing*; and by the 3 W. c. 11. *from the publication of such notice in the church*.

But if any person who shall come to inhabit in any town or parish, shall be charged with and pay his share towards the publick taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. s. 6.

But by the 9 & 10 W. c. 11. *Persons residing under a certificate shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.*

Shall

Shall be charged with] Although the rate be in form, or Form of the rate. in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: For it would be hard, that one of the parish should come and say, that it was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. 19 Vin. 386. *St. Giles's Cripple-gate* and *St. Mary Newington*.

Shall be charged with and pay his share towards the publick Poor rate. *taxes]* *M. 13 G. Seal:n Tongall and Worplesdon*. The landlord was rated to the poor for the tenement, as being in his hands, and the tenant paid the rate. By the court: The tenant doth not gain a settlement, unless he be both rated and pay. *Foley*, 128. 2 *Seff. C.* 122.

E. 4 G. 2. Kingver and Kingwinford. A person rented a tenement and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of *Richard Cotes* that rented the tenement before was kept in the levy books. By the court: This was no settlement. *Foley*, 120.

M. 9 G. 2. Sarrat and Bovington. The landlord, who never occupied the house, was charged to the poor rate; but the tenant, on demand of the overseers, paid it. By *L. Hardwicke Ch. J.* and the court: The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay, in order to gain a settlement. *Burr. Settl. Cas.* 73.

M. 10 G. 2. K. and Bramshaw. The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant, on demand of the said landlord, paid the rate. By the court: It is a settled point, that a person must be rated as well as pay; otherwise he gains no settlement. *Burr. Settl. Cas.* 98.

H. 10 G. 2. Lower Walton and Appleton. The father was rated, and the son who occupied the tenement paid the rate. By the court: This gained no settlement to the son. *Burr. Settl. Cas.* 100.

But yet it is not necessary that the occupier should be rated by name: As in the case of *K. v. Brightmen*, *E. 8 G.* Where a man lived in a place called *Hoscoe's* tenement, and paid taxes there by the name of the occupier of *Hoscoe's*; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. 8 *Mod.* 38. *Burr. Mansf.* 1062.

T. 31 G. 2. Painswick and Cirencester. The pauper, *Isaac Moorman*, took a house in *Cirencester*, of one *Thomas Clifford*, and agreed to pay the land tax, and poor taxes, and

and all other taxes. The rating was thus: "*Thomas Clifford*, or tenant." *Moorman* paid the taxes; and the overseers gave receipts to him in his own name. The landlord *Thomas Clifford* lived five miles off. It was urged, that *Isaac Moorman* himself was not rated; being neither expressly named, nor even personally hinted at. But the court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Circncester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. *Burr. Settl. Cas.* 465.

E. 4 G. 3. Openshaw and Gorton. James Bowden, settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window-tax. The rating was thus: "*Bowden's*." The landlord himself for some time paid the taxes; but in the last year, the landlord having some disputes with the overseers about his assessments, directed the overseers to call upon his tenant *Bowden* for a poor rate and a church rate, and tell him that he his landlord ordered him to pay, and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the estate (which was six days before the order of removal), when he repaid the money. It was objected, that in this case the tenant was neither rated nor paid. By *L. Mansfield Ch. J.* This was a tenant's tax. And he is assessed by name, *Bowden's*. The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish. *Burr. Settl. Cas.* 522. *Black. Rep.* 463.

T. 14 G. 3. St. Olave's and Warblington. The pauper *William Freemantle*, being settled at *Warblington*, hired a house, and lived in *St. Olave's*; where a church rate was made in 1773, wherein his name appeared thus: "*William Freemantle* (to bring security) 1s. 6d." And the said sum was received by the churchwarden. But the said churchwarden (who had given this evidence) being cross-examined, it appeared that the rate, when first made, was cast up, and no sum of money was set against the name of *William Freemantle*; but that afterwards, the churchwarden, being continued in his office for the next year, met the pauper, who told him "he had got a certificate from *Warblington*, and had delivered it to the guardians of the poor house." That thereupon the said churchwarden

den demanded of him, and received of him, the sum of 1s. 6d., and afterwards (on the same day) set down in figures the said sum in the rate made in 1773: But finding that the pauper had no such certificate, he offered to return the money, and the pauper refused to accept it. By the court: This is not an informal rate, or irregular in the manner of making it. It is no rate at all. *Burr. Settl. Cas.* 787.

M. 18 G. 3. *Ashley and Walsall.* The pauper *Joseph Dean* took a farm in the borough of *Walsall*, and paid the poor rates in his own right, which were charged in these words only, *Late Lowbridge's house*, 2l. 6s. 6d.—1s. 6d. That various other tenements in the said borough were charged in the same manner after new inhabitants had come into them, who severally paid the rates for them: That this tenement had been so charged ever since one *Lowbridge* left it. The question was, whether this *form of rating* was sufficient to gain a settlement, as there was no doubt of the pauper's having paid the rate?—By *Aston J.* and the court (*L. Mansfield* being absent); It is agreed that the person must be both rated and pay; and as to the manner *how* he is to be rated, it is clear, that his name need not be inserted in the rate: If the parish have sufficient notice of him, it is enough; paying under rating is equivalent to notice, and the officers have received the rate of this man for two or three years, and therefore must have known him; and it is stated that he *paid in his own right*: And it was determined that he thereby gained a settlement. *Cal. Cas.* 35.

H. 21 G. 3. *Bailey and Hackmondwicke.* The mother occupied the house, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, knowing at the same time that she was dead. By *L. Mansfield*: There must be such a rating, and paying, as to shew manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and could be on nobody else. This (he said) was determined in the above case of *K. and Walsall*, where the rate was "*Late Lowbridge's*. *Douglas*, 543. *Cal. Cas.* 103.

H. 21 G. 3. *Croydon and Corhampton.* The overseers made a rate for 2s. in the pound, in this form. "Rent 4l. "Q. certificate. Occupier, *Richard Goodiff*. Sum assessed " The overseers demanded 8s. for the rate, declaring he was assessed in that sum for the relief of the

the poor. *Goodiff* objected, alledging that he was not a parishioner. The overseer opened the rate book and shewed him his name therein, and threatened to distrain for the 8s. if he did not pay it. *Goodiff*, on this, paid the money directly. In the afternoon of the same day, the overseer returned, with the vestry clerk, and offered to return the money, saying he had taken it by mistake. *Goodiff* refused to receive it. The overseer however left it, and went away; on which *Goodiff* threw the money after him. It was objected, that here was no rating. There was no sum put against *Goodiff*'s name. The parish knew he occupied the house, but they never intended to rate him. The mistake of the overseer (and corrected so soon) in supposing him rated when he was not, could not be binding upon the parish. But by *L. Mansfield*: There is no question in the case. The title of the rate is, Two shillings in the pound; and in the column of rent, *Goodiff*'s rent is 4l. This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides, he has paid it, and against his will; and he shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Douglas*, 599. *Cal. Caf.* 108.

T. 28 G. 3. K. v. Llangammarch. The pauper was removed from *Llanwysyd* to *Llangammarch*, which removal was confirmed at the sessions, to whom it appeared, that the pauper in *May* 1778 rented a house and land in *Llangammarch* at 5l. *per annum*. No agreement was then made between the landlord and tenant about payment of the taxes. The house is called *Bryn Ffrwst*, or *Waynllwyd*, and the land is rated to the poor tax in *Llangammarch*, by the name of *Waynllwyd*. The pauper lived one year in the house, but paid no taxes for it. In *September* 1778 the landlord informed him, that taxes were wanted for his land, who desired the landlord to pay them, and he would repay him the same. In fact no taxes were ever paid by, or demanded from, the tenant; but it appeared that the landlord paid the taxes, and that the pauper allowed them. The overseer of *Llangammarch*, who received the taxes from the landlord for this land, knew nothing of the pauper; nor whether or not he resided at this farm at the time. A rule was obtained to shew cause why the order of sessions should not be quashed.—*Bower* and *Leister* shewed cause, and cited the cases of *K. v. Painswick* (a), and *K. v. Walfall* (b). *Caldecot*, *contra*, was stopped by

(a) *Ans.*, this title.(b) *Ans.*, this title.

the court.—*Aspburft J.* The circumstance stated in this case, that the overseer did not know the pauper, nor whether he resided on this farm, distinguishes it from the cases cited. The ground of the determination in *K. v. Painſwick*, was the notoriety of the occupancy. For when Mr. *J. Dennison* thought that rating the house only might be sufficient; he added, “for the parish could not but know “who was the occupier.” That, indeed, is the natural presumption; but we cannot presume against the facts of the case; and here it is expressly stated as a fact, that the overseer knew nothing of the pauper, or whether he resided at this farm. The reason why a party gains a settlement by paying taxes is, because it is an admission by the parish that he is an inhabitant. There is no foundation for the distinction which has been taken between the knowledge of the overseer, and that of the parish at large; for the overseers are the trustees for, and transact the business of, the parish, and they ought to know the state and conditions of the inhabitants. And, indeed, if we could presume either way, it would rather be, that the parish even did not know that the pauper resided in this farm. *Buller and Grose J.* of the same opinion. Rule absolute. *Durnf. and East, 2 V. 628.*

E. 7 G. 2. Oakehampton and Kenton. A tide waiter resided in *Kenton*, and had a salary. He was rated for this salary to the land tax in *Kenton*. It was paid for some time by himself, but repaid to him by the collector of the customs; and afterwards was paid by the collector. It was objected, that a taxation, without payment, gains no settlement: Then the question is, Whether he paid his share towards the publick taxes and levies of the parish? And it is plain that he has not. For it was not his own money, but the money of the collector. By *L. Hardwicke Ch. J.*: Suppose a landlord has agreed to reimburse his tenant, would not the tenant be settled? This collector did not pay it to exonerate the parish, but to better the man's salary. And by the court: It hath been settled, that the land tax is a parish tax within the act; and his being taxed for his salary makes no difference. *Burr. Sett. Caf. 5.*

And in the case of *Bramley and Armley, H. 9 G. 2. John Cluse*, the pauper, after his settlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. It was urged, that as the land tax is always allowed or repaid by the landlord, the payment thereof can gain no settlement to the tenant.

By the court: It hath been a great doubt, whether in this respect the legislature did not mean parochial taxes. But this hath been long gotten over; and the land tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it. *Burr. Settl. Caf. 75.*

So also in the case of *K. and Chidingsfold, H. 30 G. 2.* It was moved to quash an order of sessions, not stating the case, but merely the question, Whether the tenant's paying the *land tax* (which was allowed to him again by his landlord) amounts to such a notice, as shall gain the tenant a settlement? Which the sessions held, that it did not. In support of the motion, was cited the case of *Oakebampton and Kenton*, where a tide waiter's being taxed to the land tax for his salary, was holden to be sufficient notice so as thereby to gain a settlement, even though it was paid by the collector. And the aforesaid case was cited of *Armley and Bramley*. On shewing cause, the counsel on the other side acknowledged, that they could not support the order: the point being already fully settled by former determinations. And the rule for quashing the order of sessions was made absolute. *Burr. Settl. Caf. 415.*

And in the case of *Fulham and St. Margaret's Westminster, M. 33 G. 2.* The tenant was assessed to and paid the land tax; which was allowed to him by his landlord, on settling his account with him for the rent. It was insisted, that it hath been often and fully settled, that this will gain a settlement. And upon that ground of its being a settled point, the court adjudged accordingly. *Burr. Settl. Caf. 488.*

H. 15 G. 3. Carshalton and St. Magnus. The pauper, *Thomas Rummels*, living in a house at *Carshalton* belonging to *William Bridges* esq. paid the land-tax there. The assessment was, "Landlord rated, *William Bridges* esq. for "lands and tenements in the occupation of *Thomas Rummels*." The court were of opinion, that the landlord is the person rated, and not the tenant; that it was a very hard case upon the poor man; but they thought the objection too strong to be got over. *Burr. Settl. Caf. 809.*

E. 17 G. 3. K. v. St. Mary Whitechapel. The pauper, *James Turner*, a labourer in the dockyard at *Portsmouth* in the parish of *Portsea*, was rated and paid to the land tax at *Portsea*, and resided there upwards of 40 days. That all the officers in the said dockyard were rated to the land tax. And it was adjudged that he thereby gained a settlement. *Cald. Caf. 24.*

E. 23 G. 3. K. v. Mitcham. John Heard and his family were removed from *Mitcham* to *Moredon*. The sessions quashed the order, and stated the following case: That the pauper inhabited for several years a house at *Moredon* which he rented of Mr. *Gaffon*, who was also an inhabitant there, at the yearly rent of 5 l. clear of all taxes, parliamentary and parochial. That whilst he so occupied the same, an assessment for the land tax was made on the said parish of *Moredon*, the title of which was, "*Surry, &c.* an assessment on the inhabitants of the parish of *Moredon*, for raising a sum by a land tax, &c." in the following form:

Rent	Landlord's name	Tenant's name	l.	s.	d.
£ 5 0 0	Mr. <i>Gaffon</i>	John Heard	0	9	9½

That *Heard* paid the said 9 s. 9½ d. to the collector who demanded the same.—By *L. Mansfield*: The question is, whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then in this case is no charge upon either. The answer to this question must therefore be gathered from other circumstances. In the first place, who ought to be charged? Undoubtedly the occupier ought. The landlord, it is true, is the debtor, but the rate is pointed at the occupier. The parish cannot tell who is the landlord, or who has a rent charge. It is upon the occupier that the officer of government takes his remedy; and tho' the landlord is directed to allow the sum levied out of the rent, the parish have nothing to do with transactions between landlord and tenant: This is a matter between them; but for the sake of the publick, the occupier, the ostensible person, is to be considered as the person first liable. The next consideration is, what does the assessment profess to be? It professes to be an assessment on the inhabitants, that is, the occupiers; the land'ord may or may not be an inhabitant; the tenant must be. Then of whom is it demanded? Of the occupier. Who pays it? The occupier. We may therefore supply from the circumstances that which is omitted in the rate itself; and intend here, that which was expressed in the above case of *K. v. Carshalton*; with which the present decision does not interfere.—Order of sessions quashed; and the order of the two justices affirmed. *Cald. Cas.* 276.

M 24 G. 3. K. v. Endon, &c. Thomas Lowell and his family were removed from *Tittsworth* to the united townships of *Endon*, *Longdon*, and *Stanley*. The sessions confirmed the order, and stated the following case: That the pauper being settled in *Endon*, rented a cottage of Lord

Macclesfield at *Lady-day* 1776, in the hamlet of *Tittesworth*, at 20s. a year. And at the time of taking, it was agreed that the pauper should pay the land tax and all other taxes; but it did not appear that this agreement was known to the parish officers of *Tittesworth*. The pauper entered at *Lady-day* 1776, and continued until he was removed in *December* 1782, all which time he paid the land tax for the premises; but at *Michaelmas* 1780, being ill and reduced in circumstances, he desired the parish officer to be excused, which he promised to use his endeavour to do, and he never paid the land tax after *Lady-day* 1781. And it appeared from the rates of 1781 and 1782, that neither the pauper's name, or that of any other person living in the said premises, were inserted therein, or that *L. Macclesfield* was rated for the same, though the pauper continued on the premises till *December* 1782: but it appeared some other premises of *L. Macclesfield's*, in the occupation of *George Gilman*, were inserted in the assessment of 1781 and 1782, in the following manner; which were not inserted in any of the rates produced previous to the rate of 1781.

Names of proprietors	Names of occupiers	Houses & lands	Sum assessed
Earl of <i>Macclesfield</i>	<i>George Gilman</i>	House & land	0 0 5½

The pauper lived in part of the said cottage, and during some of the time let the remaining part, together with half an acre of land, for 3l. 10s. 0d. a year. In the land tax assessment of 1776 and 1779, *L. Macclesfield* was assessed for the said premises. In 1780 the form of the assessment was:

Names of proprietors	Names of occupiers	Houses & lands	Sum assessed
Earl of <i>Macclesfield</i>	<i>Thomas Lovell</i>	House & land	0 0 5½

The only rates produced were those for the said years 1776 and 1779, 1780, 1781, 1782. It was urged in support of these orders, *inter alia*, That the tenant's name was first inserted in the rate in 1780, the time when an act passed for regulating the right of voting at county elections; which act directs the very form of assessment here used for the land tax rate; that it must therefore be presumed, that the tenant's name was now introduced merely in compliance with that act, and not with any view of making any alteration in the person charged.—The counsel on the other side were stopped.—By *L. Mansfield*: The question is, who is rated? It is a question of fact. Here is no title to the rate, and upon the face of the rate it stands indifferent. What then are the circumstances? In the first place, the officers have applied to the tenant, and he has paid. He afterwards,

in consequence of his poverty, applies to be exempted from payment in future. This is complied with; and what follows? They never charge any body else. They therefore thought the tenant ought to pay, or nobody; and this is decisive, that the landlord was never intended to be rated. No inconveniences need be incurred from the provisions of the late act of parliament; it does not prevent the parish from rating any body by name, as was done in the case of *K. v. Carshalton (a)*. They may still declare their intention to rate the landlord.—The other justices concurred.

—Both orders quashed. *Cald. Cas.* 374.

M. 25 G. 3. K. v. St. Lawrence Winchester. Charles Scullard and his family were removed from *Eastmeon* to *St. Lawrence Winchester*: The sessions confirmed the order, and stated the following case: That the pauper resided in *Petersfield* under a certificate from *St. Lawrence Winchester*: That he removed before the making the assessment after-mentioned into *Eastmeon*, and occupied a house there till 8th May 1784, the day he was removed: That *William Clarke* was the proprietor of the said house: That on 7th June 1783 a land tax assessment for the tything of *Eastmeon* was made in the following form: “County of *Southampton*, to wit. For “the tything of *Eastmeon* in the said county, an assessment “made in pursuance of an act of parliament passed in the “23d year of his present majesty’s reign, for granting an “aid to his majesty by a land tax to be raised in *Great Bri-* “*tain* for the service of the year 1783.

Rentals	Names of proprietors	Names of occupiers	Sums assessed
1 0 3½	Mr. William Clarke	Charles Scullard	0 4 0½

That the pauper paid *Joseph Terrell* (who called at his house) 2 s. 0½ d. being for one half year of the said assessment, and *Terrell* gave him the following receipt: “*Octo-* “*ber 20th, 1783, received of Mr. Charles Scullard 2 s. 0½ d.* “for half a year’s land tax for Mr. Clarke’s house, due at “*Michaelmas* last past; per *Joseph Terrell*, assessor.” That *Terrell* was collector of, as well as assessor to, the land tax. —*L. Mansfield*: It has been decided over and over again, that the occupier must be presumed to be rated, against whom the first remedy lies as between him and the publick. Here his name is in the rate, and the officer receives of him. There is not a tittle to shew that the parish meant to rate the landlord. The receipt only describes the premises, upon which the assessment was made.—*Buller J.*

(a) *Ante*, under this head.

It was expressly determined in *K. v. Mitcham (a)*, that the land tax is *primâ facie* a tenant's tax. Why? because all the remedies are against him; and without some new ingredients in the case, the point ought not to have been stirred again. It was not said there, that you might not rate the landlord. You may. It is so holden in *K. v. Endon (b)*, &c. and *L. Mansfield* said there, that "it is a question of fact whether landlord or tenant is rated, and the sessions should state it: If they do not, the court must collect it from the circumstances that appear to them; and if nothing appear to the contrary, the occupier must be presumed to be the person. *Willes* and *Ashburst* were absent. Both orders quashed. *Cald. Cas.* 379.

M. 25 G. 3. K. v. St. James, Bury St. Edmunds. Samuel Cross Purkis and his family were removed from *St. James* in the borough of *Bury St. Edmunds* to the parish of *Hopton*. The sessions quashed the order, and stated the following case:—That the pauper was settled at *Hopton*, and afterwards became an inhabitant and occupier of a tenement belonging to *Joshua Grigby* esq. in *St. James* in the town of *Bury*, at 5 l. a year, and had, during his residence there, paid the land tax there, when demanded of him by the officer. The title of the rate was, "Borough of *Bury St. Edmunds* in the county of *Suffolk*, for the parish of *St. James* in the said borough. An assessment made in pursuance of an act of parliament passed in the 23d year of his majesty's reign, for granting an aid to his majesty by a land tax to be raised in *Great Britain* for the service of the year 1783," and made in the following manner:

Names of proprietors	N. of occupiers	What assessed & where situated	Sums assessed
<i>Joshua Grigby</i> esq.	<i>Eastgate Str.</i> <i>Samuel Purkis</i>	Tenant	4 0 0 0 4 0

All the other assessments were made in the same manner; and the collectors who were parishioners, demanded the said tax of the pauper, who paid the same, and they gave him a receipt in the usual printed form, as follows: "The 25th December 1783, received of Mr. *Samuel Purkis* the sum of 4 s. so much being assessed on the landlord for the third quarterly payment, pursuant to an act of parliament for granting an aid to his majesty by a land tax to be raised in *Great Britain* for the service of the year 1783. By *John Lawrence* collector." Whereupon this court doth adjudge, that the pauper, by the above rating and payment, has acquired a settlement in *St. James* aforesaid.

(a) *Ante*, under this head.

(b) *Ante*, under this head.

—*Mis-*

—*Mingay* shewed cause in support of the order of sessions; and insisted, that the sessions, by determining the settlement of the pauper to be at *St. James's*, had drawn their conclusion, that the tenant was rated and not the landlord; that it was decided, that rating was a question of fact; and that, where both landlord's and tenant's names appeared upon the rate, it was the province of the sessions to find this fact of, Who was rated? That it was settled that the land tax was a tenant's tax; that therefore at the time the rate was made the tenant was the person rated; that this could not be affected or varied by what happened afterwards between the collector and the pauper; that the rate is the language of the assessor, the receipt is only the act of the collector; that this subsequent transaction ought not to change the nature of the fact, as evidenced by the most authentic instrument that the law knows upon that subject; that if the receipt be permitted to affect the rate, it will put every settlement under a rate in the power of the collector; that receipts were on these occasions frequently given to ignorant men; that to countenance this would open a door to great frauds; that the rate itself was the only safe guide; suppose the rate had said one thing and the receipt another? that the rate was made at the time and made first, and was therefore upon every principle intitled to a preference; that the tenant was subjected to all the inconveniences of being rated, and why should he be deprived of the benefits? that the collector was not warranted by the rate in giving such a receipt; and that upon that ground the sessions might have decided as they did upon it.—*Adair and Le Blanc*, on the other side, insisted, that this was the reverse of all the former cases, for that here it appeared that the landlord was rated and not the tenant; that it was true that the rate itself was doubtful on the face of it, and that, if any principle was to be deduced from the cases generally cited upon the subject, it was, that where it was left uncertain upon the face of the rate who was rated, this might be explained by extrinsic circumstances; that the receipt did here explain the doubt, and shewed that it was the landlord who was meant to be assessed; that in fact here is neither a rating or payment by the tenant; that if the tenant is assessed he certainly did not pay, for the receipt expresses that the landlord paid; and no pauper can gain a settlement without paying as well as being rated.—*L. Mansfield*: I stated in the last case, that where it was uncertain who was rated, where the rate is silent, and there is no other collateral evidence to supply this defect, the law would presume that the tenant was in-

tended to be rated, because *prima facie* it is a tenant's tax, and he is consequently first liable. But where the landlord is expressly rated, or where there is any collateral matter to shew that he is intended to be, there the legal presumption may be rebutted. Here is a strong piece of evidence coming out of the tenant's hands, to shew that the landlord was the object of the rate.—*Buller J.* This is not a presumption *juris et de jure*; it admits of contradiction. The receipt relates back to the time of the rate, and so it is not a rate of the tenant, but of the landlord; besides, the receipt is strong evidence as to the payment, that he paid it as agent to the landlord, as well as that the officer did not receive it of him in his own right; so that the tenant does not appear to be intitled either way. *Willes and Ashburst J's.* were absent. Order of sessions quashed, and the order of the two justices affirmed. *Cald. Cos.* 385.

M. 30 G. 3. K. v. Folkestone. *James King* and his wife and family were removed from that part of the parish of *Folkestone* which lies within the township of *Falkstone* in *Kent*, to that part which lies without. The sessions quashed the order, subject to the opinion of the court on the following case: On the 10th of *October* 1781 the pauper hired a house in the parish of *Folkestone* in *Kent*, of the yearly value of 5 l. 5 s. of *H. Seldon*, in which he resided 3 years; during which time he paid the land tax for the house: but after he had paid three quarterly rates in 1782, he complained to his landlord that his (the landlord's) other tenants did not pay the land tax for their houses, and therefore desired him to deduct it. The landlord refused to allow what he had already paid, but agreed to deduct it in future, which he did. There was not any agreement made between the pauper and his landlord which of them should pay the land tax. The rate was in the following form:

Sum assessed	Proprietors names	Occupiers names	Premises	Quarterly payment
10 10 0	Henry Seldon	James King	House	0 2 6

The sessions were of opinion that the *landlords* were the persons intended to be rated in the rate; and that the names of occupiers, inserted in the second column, were only meant to distinguish the premises, and to direct the collectors to whom they were to apply for payment of the rate.—

Mingay, in support of the order of sessions, was stopped.—*Robinson*, *contra*, said that this case was determined by that of *K. v. St. Lawrence Winchester (a)*, where the facts were

(a) *Ante*, under 'his head,

precisely similar to those in the present case, except that here the justices have stated as their opinion, that the landlords were intended to be rated : but that cannot vary the case ; for they have stated all the facts, for the opinion of this court, without meaning to preclude them by any opinion of their own.—*L. Kenyon* Ch. J. This is the landlord's tax. And when the question first came before the court, it was doubted, whether a tenant who was rated to and paid the land tax, should gain a settlement by it. But in *K. v. Bramley* (a) it was observed, that “ that doubt “ had been gotten over.” But in this case no question can arise : on the rate, there is one column of the proprietors, and another of the tenants ; but the names of the tenants were only inserted in order to shew for what property the landlords were rated. And the justices in this case have stated (what I think they were bound to do) that the landlord was rated.—*Buller* J. In *K. v. Mitcham* (b), *K. v. St. Lawrence*, and *K. v. Endon* (c), it was held that, as between the publick and the tenant, the land tax is the tenant's tax, tho' as between the landlord and the tenant it is otherwise ; that, if it be doubtful on the rate itself, whether the landlord or the tenant be rated, it must be collected from other circumstances ; that the land tax is *primâ facie* a tenant's tax ; and that if nothing appear to the contrary, the occupier must be presumed to be the person rated. This idea was not adopted in these late cases for the first time ; for so long ago as in a case in 30 G. 2. *Forster* J. said, “ the occupier is the person who is to pay.” But whether the landlord or tenant be rated, is a question of fact which should always be found by the justices ; here it is stated, and we are precluded by their opinion from entering into the question. Order of sessions affirmed. *Durnf. and East*, 3 V. 505.

H. 30 G. 3. K. v. Bridgewater. Two justices removed the children of *Thomas Bastard* (who had absconded and left his family) from *St. John the Baptist* in *Cardiff* to *Bridgewater*. Which was confirmed at the sessions, subject to the opinion of the court on the following case : *Bastard* (the father) inhabited for some time in a house in *St. John's*, which he rented of *W. Lewis* ; while he so occupied the same, an assessment was made in *St. John's* for the land tax, entitled, “ A rate on the several inhabitants, owners, and “ occupiers of houses, lands, &c. in the parish ;” and in this form :

(a) *Ante*, under this head.
(c) *Ante*, under this head.

(b) *Ante*, under this head.

Landlords	Tenants	Premises	Sum assessed
<i>J. Williams and others</i>	<i>Thomas Bastard</i>	House	0 6 9

Thomas Bastard having absconded and left his house and children, *W. Lewis* the landlord, on the 12th May 1789, desired the collectors of the land tax to go with him to *Bastard's* house in order to make a distress on his goods for the 6 s. 9 d. *otherwise he should lose the money*; and *Lewis* accompanied them to *Bastard's* house, where they saw one of *Bastard's* daughters, about 12 or 13 years old, of whom they enquired for *Bastard's* goods; she, pleading poverty, said, she had a friend who would pay the money; and accordingly she went with the collectors and the landlord to one Mrs. *Owen*, who gave a guinea to the collectors, *who received* thereout the land tax, and both the collectors signed a receipt for the tax, but the receipt was not produced to the sessions. — By the court: We are clearly of opinion the money was raised for *Bastard's* use, and advanced by a friend in order to protect him from a distress, under which *his goods* would otherwise have been taken. Both orders quashed. *Durnf. and East*, 3 V. 550.

His share] *M. 10 G. 3. Stapleton and Stoney Stanton*: The son lived with his mother, as part of her family, and was rated and paid the tax for the estate which she occupied. It was objected, that this was not *his share*, but *his mother's share* of the publick taxes or levies of the parish: The charge must be in proportion to what a man occupies; but this man occupied nothing. It was answered, that the words *his share* mean no more than such part or proportion of the whole tax, as was charged personally upon him. — The court were very clear, that he gained a settlement by having been thus charged, and having paid what he was so charged with. *Burr. Settl. Cas.* 649.

Scavengers and highways.

Of the publick taxes or levies of the said town or parish] By the 9 G. c. 7. No person who shall be assessed to the scavenger's rate, or to the repairs of the highways, and shall duly pay the same, shall be deemed to be settled thereby. s. 6.

County bridges.

T. 9 An. Paying to the county bridge gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. *Cases of S. 1.*

But perhaps the case may be altered in this respect, since the act of the 12 G. 2. c. 29. which charges a sum

certain upon every division in proportion to their poor rate, towards the repair of bridges and other county expences, brought together by the said act into one general county rate; which before were collected separately, and (with respect to bridges) charged by the justices upon every individual. Whereas now, if a man pays to the county rate, he eases the division, where he is assessed and pays, of so much as his assessment comes to. And there is in this case the same notoriety of his inhabitancy as in the case of the poor rate.

By the 21 G. 2. c. 10. Persons assessed to and paying the duties on houses and windows shall not thereby gain a settlement.—And one reason may be, because they do not thereby contribute any thing to the publick stock of the parish. So also by the 18 G. 3. c. 26. payment of the duties granted by that act on houses worth the yearly rent of 5l. and upwards, shall not gain a settlement.

Payment of the window tax and house duty gains no settlement.

x. Of settlement by serving a parish office.

By the 13 & 14 C. 2. c. 12. Forty days inhabitancy shall gain a settlement: By the 1 J. 2. c. 17. Such 40 days are to be reckoned from the delivering of notice in writing: And by the 3 W. c. 11. they are to be reckoned from the publication of such notice in the church.

But if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any publick and annual office or charge in the said town or parish, during one whole year; he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published. 3 W. c. 11. L 6.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute some annual office in such parish, being legally placed in such office.

For himself and on his own account] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. 19 Viner, 379. Lothsome and Sheriff Hales.

Deputy constable gains no settlement.

H. 4 G. 3. Winterbourn and St. Philip and Jacob. The custom was for the constable to be presented by the jury at the lect. The jury presented Richard Bayly esquire, who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into

into

into the office by a justice, and served the same for a year; but was not presented thereto at the court leet, as constable in his own right. By the court clearly: He gained no settlement. *Burr. Settl. Casf. 520. Black. Rep. 452.*

H. 9 G. 3. Allcannings and Patn-y. The house occupied by Mr. *Amor* being in turn to furnish a tithing-man for the parish of *Patney*, the leet jury presented him to that office. And he, by leave of the court leet, put in his place *Thomas Palmer*, a common labourer, an housekeeper, living in the same parish; who was sworn in accordingly at the said leet, and served the said office for a year; but Mr. *Amor* paid him all his expences attending the execution of it. — By the court: *Palmer* gained no settlement in *Patney*; for, clearly, he served for *Amor*, and did not execute the office *for himself and on his own account.* *Burr. Settl. Casf. 634.*

Constable serving by deputy gains a settlement.

But in the case of *K. v. Hope Mansell, E. 23 G. 3.* it was determined, that a person chosen and sworn into the office of petty constable, but who did not serve the office himself, but hired another person to serve as his deputy, thereby gained a settlement. *Cald. Casf. 252.*

Parish clerk is an annual office.

Annual office] *H. 9 Ann. Gutton and Milwich.* A person being chosen *parish clerk* by the parson, served for several years, and received his fees and dues. By the court: It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him; for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish. *Cases of S. 241. 2 Salk. 536. Foley, 123.*

And in the case of *K. and St. Mary Berkhamslead, E. 8 G. 2.* The court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate person to gain a settlement; for it is an *annual office* and more. *2 Sess. C. 182.* And it is not necessary for a *parish clerk* to be licensed by the ordinary, in order to be legally placed in such office. *Str. 942.*

Sequestration during a sequestration.

T. 13 G. 3. Helsington and Over. Two justices by their order remove the reverend *John Langhorn* from *Helsington* in the county of *Westmorland*, to *Over* in the county of *Chester*. The sessions, upon appeal, confirm that order, and state specially: That on the first day of *October* 1766, the vicarage of the parish of *Over* was sequestered for three years, or till the bishop should release the same:

That

That on the-twelfth day of the same *October*, the said *John Langhorn* was ordained deacon by the bishop of *Chester*, in order to supply the cure of *Over* during the sequestration: That from the 15th of the said month, to the 15th of *June* 1768, he by an exchange with the curate at *Alton*, resided and did duty in the parish of *Alton*, but received his salary regularly from the sequestrators of *Over*: That from the said 15th of *June* 1768, to the first day of *October* 1769, he resided and did duty as curate at *Over*, when the sequestration ended: That it did not appear that he had any licence to the curacy of *Alton*. On shewing cause against quashing these orders, it was argued, that this office of curate or sequestrator for three years, or till the bishop should release the vicarage from the sequestration, was a publick annual office or charge in the parish, and was executed on his own account. It was conferred upon him under his own qualification of a deacon, and quite independent on the vicar of *Over*. And its being conditional, if the bishop should release the sequestration, is no objection; a conditional hiring would gain a settlement. Unto which it was answered, that this cannot be considered as executing an annual office or charge in the parish on his own account. It could not be annual; because the sequestration would be at an end, the very moment the debt had been paid. The curate also might have dissolved the contract whenever he pleased. He had no freehold in his office, as a *parish clerk* has, who is upon that foot indeed holden to be irremovable, and to gain a settlement. By *L. Mansfield*: There is no colour for considering this as an annual office: It is no office at all. And *Mr. J. Aston* said, You cannot call it an annual office, when the sequestration may be determined at any time. It is not like the annual office of a constable or a tithingman. They are appointed generally, and to serve for a year. That of *parish clerk* is a freehold; and it is upon that foot, that a *parish clerk* gains a settlement. The other two justices concurred. And both the orders were quashed. *Burr. Sett. Cas.* 746.

H. 29 G. 3. K. v. Liverpool. *Samuel Littlemore* and his family were removed from *Liverpool* to *Stourton*. The sessions reversed the order, subject to the opinion of the court on the following case: The pauper was originally settled in *Stourton*, and about 16 years ago came to reside in *Liverpool*, and while he resided there was elected *Sexton* by the proprietors of seats in the church or chapel of *St. James's* at a vestry there held in the presence of the churchwardens, being recommended by the then minister to that office; and executed that office 6 years, lodging all the while in the

the parish of *Liverpool*. The boundary between *Walton* and *Liverpool* is in the chapel yard of *St. James's*; the church and part of the church yard stands in the parish of *Walton*, and the other part of the church yard is in the parish of *Liverpool*; but no corpse was ever buried in that part whilst the pauper executed the office, though corpses have been buried there since. The inhabitants of *Liverpool*, seat-holders, and others, constantly attend the church of *St. James's* in proportion of 50 to 1 of any other parish or place.—*Law* was to have argued in support of the order of sessions; but the court desired *Beacroft* and *Manley*, *contra*, to begin. They admitted, that the office of sexton was such as would entitle the person executing it to a settlement; but contended under the words of 3 *W. & M. c. 11. s. 6.* that the office must be executed in the town or place in order to give a settlement. But here he was chosen sexton to the chapel of *St. James*, which stands in the parish of *Walton*; and it appears that he never executed any part of the office in *Liverpool*. The executing of an annual office is equal to giving notice, but the execution of this office in *Walton* was no notice to the parish of *Liverpool*. The sexton is appointed to the church, and not to the church yard; for it appears from the definition of a sexton in *Burn's Eccl. Law*, and *Chamb. Dist.* that he is an officer to take care of the vessels, vestments, &c. belonging to the church, and to attend the minister and churchwardens at church; and this office is entirely distinct from that of a grave digger.—*L. Kenyon Ch. J.* There is no doubt but that part of the office of sexton consists in digging graves: This is different from that of the sacrist, which is an office scarcely known since the reformation, except in some of the cathedrals; whose duty it is to take care of the sacred vestments. And it is as clear, that the office of sexton is a publick office within the meaning of the 3 *W. & M. c. 11. s. 6.* In this case the church yard lies in two parishes, and the sexton gained a settlement in that in which he resided.—*Per curiam*: Order of sessions confirmed. *Durnf. & East, 3 V. 118.*

Collector of the
duties on births
and burials.

H. 7 G. Bisham and Cook. The sessions setting out the fact specially, adjudged the settlement of a poor person to be at *Bisham*, because when he lived in that parish, he executed the office of collector of the duties given by the 6 & 7 *W. c. 6.* on births and burials. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: Besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement,

ment, within the exprefs words of the act. By the court: The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: Can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not to be a *parish office*, but a *publick annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley*, 124.

H. 9 Ann. St. Mary and St. Laurence in Reading. Mr. *Foley* says, the question was, Whether the being churchwarden for the borough, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And, by the court, it was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley*, 121.—But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. *Viner*, from a manuscript note which he had of this case, says, The office is mentioned there to be warden of the borough (which is most likely), being in nature of a *tythingman*, to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a publick officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him. And, by the court, it was held a good settlement, being within the exprefs words of the statute of executing an office in a town or parish. 19 *Viner*, 379.

Churchwarden
for a borough.

E. 8 G. 2. St. Maurice's and St. Mary Calendar's in Winchester. William West, a certificate man from St. Thomas's, came into the parish of St. Mary Calendar in Winchester. He was afterwards chosen one of the constables for

Constable of a
city which com-
prehends several
parishes.

for the city of *Winchester*, which city consists of several other parishes besides that of *St. Mary Calendar*; and was legally placed in that office, and executed it in and through all parts of the city for one whole year; during which time he resided in the parish of *St. Mary Calendar*. By the court unanimously: He avoided his certificate, and consequently gained a settlement in *St. Mary Calendar's*, by executing this office in that parish; though chosen by the whole city, and not by the parish of *St. Mary* singly; and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish, being legally placed in such office. *Burr. Settl. Cas. 27.*

Tithingman.

H. 9 G. Burlifcomb and Samford Peverell. The sessions on a special order adjudge, that the office of *tythingman* is not such an office as that a man thereby shall gain a settlement. But by the court: The order must be quashed; for this is an annual office in the parish, within the words and meaning of the act. *Str. 444.*

H. 8 G. 2. Holy Trinity and Garfington. A certificate man was appointed *tythingman* by the steward of a leet. He served a year; but was not sworn in till half the year was expired. The court inclined that it was a good settlement; but being a new case, and somewhat doubtful, they ordered a second argument to this point, Whether he was legally placed in the office or not, as not having been sworn till half the year was expired. But the order was afterwards quashed for want of complaint that the pauper was actually become chargeable. *Foley, 123. Cas. of S. 72. Burr. Settl. Cas. 30.*

Borsholder.

M. 17 G. 2. Wingham and Sellindge. A certificate man was told by his wife, that the borsholder had left a wooden tally at his house, as a token that he had been chosen *borsholder* at a court leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a presentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a justice directed to the borsholder, and for that whole year he was willing and ready to execute the office. By the court: When an order of sessions states the facts specially, the court must take it, that the justices have stated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that here is no foundation for supporting a legal placing. *Str. 1299. Burr. Settl. Cas. 223.*

Hogrieger.

T. 32 G 3. K. v. Whittlesea. W. Sarell and his family were

were removed from *Crowland* to *Whittlesea*, which was quashed at the sessions, subject to the opinion of the court on the following case:—The pauper for upwards of 12 years immediately before his removal resided in *Crowland*, where he was legally chosen an hogringer for the parish of *Crowland* for one year, at a court leet for the manor of *Crowland*: he was presented by the jury for the said office, and was sworn therein, and paid 4 d. for the oath, and he served such office two years on his own account. The duty of such office is to attend the open commons, to see that all hogs turned thereupon were rung, and such hogs as were not rung, to take to the pound, which he frequently did, and he always received 1 d. for impounding, and 6 d. for ringing each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of *Crowland*.—*L. Kenyon Ch. J.* It is stated in the case that this is an annual office of great antiquity, and serviceable to the parish at large, and that there is an oath of office; therefore it seems to me, that it is a publick annual office within the meaning of the act. Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish. It was once made a question, Whether shoeing the horses of the lord of the manor was not equal to notice? but it was determined not to be equivalent. If this person had been hogringer to certain individuals only, he would not have thereby gained a settlement; but he was not merely an officer of A, B, or C, but of all the inhabitants of the parish. It has been held, that a tithingman, a borstholder, an ale-taster, or a hayward, may gain a settlement by serving either of those offices; and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case.—Order of sessions confirmed. *Durnf. & East, 4 V. 807.*

H. 31 G. 2. Cold Ashton and Woodchester. There was a custom to serve the office of tithingman, for half a year only at a time. By *L. Mansfield Ch. J.* This cannot be an annual office to gain a settlement.—In this case the pauper had served the office of tithingman in *Cold Ashton* for half a year, and 20 years after for another half year. *Burr. Mansf. 502.*

Serving for half a year at a time only.

M. 18 G. 2. Fittleworth and Pulborough. A certificate man was elected and sworn a tithingman for a tithing which did not extend through all the parish of *Fittleworth*, but comprehended that part of it where he resided. He executed the office a little more than five months, and then became actually chargeable, and asked relief. Where—

Serving a part of the year only.

upon two justices removed him, and their order upon appeal was discharged. And by the court: The justices had jurisdiction to remove him, though in execution of the office, he being become actually chargeable. It is not necessary that the office should extend throughout all the parish; the act only requires executing some annual office in the parish. But it must be executed for the space of a whole year. And the present case being an execution for less than a whole year, it did not avoid his certificate, and consequently did not gain him a settlement at *Fittleworth*. *Burr. Settl. Cas.* 238.

Bailiff or ale-
taster for a bo-
rough.

T. 27 & 28 G. 2. Whitchurch and Overton. It was stated, that the pauper was nominated at the court leet, and sworn into the office of *bailiff* or *ale taster* for the borough: That he executed the office in the borough for a year: That the said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court leet there: That the borough is not one fifth part of the parish: That the bailiffs have never executed any authority over the parish at large: That great part of the parish knew nothing of such office: And that new married men, and new comers, were frequently nominated for the sake of colt-ale. On the authority of the case of *Fittleworth*, this was held to be a good settlement. *Burr. Settl. Cas.* 365.

Schoolmaster.

E. 18 G. 2. Sheephead and Melborne. A person was certificated from *Sheephead* to *Melborne*, and staid there ten years, during which time the lady *Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits, and amongst others, the sum of 10 l. a year to the charity school at *Melborne*, to be paid to the vicar there for the time being. In the special order of sessions it was stated, that the certificate man officiated as schoolmaster several years, and received the 10 l. a year from the vicar: and this the sessions held, gained him a settlement in *Melborne*, where they declare he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10 l. a year, and executing an annual office. But by the court: The order must be quashed; for it doth not appear how he came into this employment, and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less to a certificate man. *Str.* 1225. *Burr. Settl. Cas.* 244.

Note, A schoolmaster is not legally placed in the office till he hath subscribed before the bishop the declaration of conformity

formity to the liturgy of the church of *England*, and is licensed by him: And by the 13 & 14 C. 2. c. 4. s. 10. if he shall execute the office without having so subscribed; he shall be utterly disabled, and *ipso facto* deprived thereof, and the same shall be void as if he were naturally dead.— Unless he is a protestant dissenter: In which case, in order to be legally qualified, he must at the sessions where he resides take the oaths and make the subscriptions in like manner as protestant dissenting ministers are required by the 19 G. 3. c. 44. whereof the clerk of the peace's certificate is the proper evidence. For which see Title **Dissenters**.

xi. Of Settlement by renting 10 l. a year.

By the 13 & 14 C. 2. c. 12. On complaint within 40 days after any person shall come to settle in any tenement under the yearly value of 10 l. two justices may remove him to where he was last legally settled for 40 days.

By the 9 & 10 W. c. 11. No person who shall come into any parish by certificate, shall be adjudged by any act whatsoever to have gained a legal settlement in such parish, unless he shall really and bona fide take a lease of a tenement of the yearly value of 10 l. or shall execute an annual office in such parish.

Within 40 days] Less than 40 days residence upon a tenement of 10 l. a year will not gain a settlement. As in the case of *Ditwin* and *Leominster*, T. 8 & 9 G. 2. *William Smith*, the pauper, agreed for a farm in the parish of *Eardisland*, to hold from *Candlemas*, at 44 l. yearly rent; and in *April* following he sowed about 15 acres of the land with grain; and in *May* following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized and driven away, for rent due to his former landlord at *Leominster*. Whereupon the said *Smith* then came to a new agreement with his landlord in *Eardisland*, and agreed to quit that farm, and to continue in the farm house and garden, and to have a small parcel of pasture with it, at the rent of 2 l. 10 s. and he continued thereupon in the said parish of *Eardisland* till *Michaelmas* following. By *L. Hardwicke* Ch. J. There was no inhabitation for 40 days in *Eardisland* under the lease of 44 l. a year; and therefore there can be no settlement gained under it. And the next agreement with his landlord in *Eardisland* was quite a separate contract, and cannot be tacked to the former. It

Forty days residence is necessary.

did not take effect till the other was finished. *Burr. Sett. Cas.* 54.

After any person shall come to settle] For taking land in the parish, of whatever value it shall be, without coming to reside there, will not gain a settlement.

What shall be deemed a sufficient residence so as to gain a settlement.

But if a man's family reside there, although he doth not reside there himself, it may in some instances be sufficient. As in the case of *St. Margaret's Westminster*, and *Ludgate*, *M. 5 G. 2.* Two justices remove *Elizabeth Conyers* from the parish of *St. Margaret's* to the parish of *Ludgate*. The sessions state the case specially, that *James Conyers*, father of the said *Elizabeth*, rented a house in *Ludgate* parish of 25 l. a year, and paid to the rates of the church and poor; but that he was a prisoner in the *Fleet* at the time he did so; and that *Elizabeth* gained no settlement for herself. Upon which the sessions adjudged that he gained no settlement by this. But the court quashed the order of sessions, and confirmed the order of the two justices. *1 Barnardist.* 76. For in this case he was in custody of the law, and in no capacity of gaining a settlement elsewhere; though occasionally absent, yet he might be looked upon as virtually resident at *Ludgate*, which was the place where he came to settle.

T. 27 G. 3. *Knighton* and *St. Margaret's* in *Leicester*. *Robert Hardy* and his three children were removed from *Knighton* to *St. Margaret*. The sessions quashed the order, and stated the following case:—The pauper being settled in *St. Margaret*, took a windmill in that parish of ten guineas a year, at *Lady-day* 1778, and occupied it for one year. On 30th of *April* following he married *Anne* the daughter of *Samuel Ward*, of *Knighton*, which is a township in the parish of *St. Margaret*, but distinct as to the maintenance of the poor. Before the marriage, *Ward* said he would give him house-room till he could provide himself; and on his marriage, he went accordingly to reside with his father-in-law at *Knighton*, whose house was about a quarter of a mile distant from the said mill, and he continued there until the death of *Ward* in 1786. During the time he occupied the said mill, or afterwards, he neither rented nor occupied any land in *Knighton*. During the last half year he rented the said mill, he kept a servant, who resided with him in *Ward's* house as part of his (the pauper's) family. The pauper believed it was known to the township of *Knighton* that he rented the mill, because he served some of the inhabitants there with grist, and they knew him to be a miller.—This case was argued by *Bearcroft & Dayrell* in support of the order of sessions; and by *Galley*, *contra*.
—*Alburt*

—*Ashurst J.* delivered the opinion of the court (after taking time to consider). The question in this case is, Whether the pauper gained a settlement in the parish where he rented a tenement of the yearly value of 10l., or in the parish where he resided, occupying at the same time a tenement in another parish? And we are all of opinion that he did not gain a settlement in *Knighton*, because, in order to gain a settlement by renting 10l. *per annum*, there must be a residence either on the premises, or at least in the parish where some part of the premises lies. The case of *K. v. Topcroft* is decisive of the question; and there are two or three other cases which confirm this doctrine, where it has been taken for granted that there must be a residence. Order of sessions quashed. *Durnf. and East*, 2 *V.* 48.

In any tenement] Here it occurs to be considered, what shall be a *tenement* within this act, so as to gain a settlement. Concerning which it hath been adjudged as follows:

What shall be deemed a tenement.

H. 10 Ann. Evelin and Retcombe. An order was drawn up specially to have the opinion of the court, Whether renting of a *watermill* of 10l. a year, would make a settlement? And by the whole court clearly: A mill is a *tenement*, and the renting thereof must gain a settlement within the statute. 2 *Salk.* 536. That is, if the party lives therein, or within the parish.

A mill is a tenement.

T. 10 G. 2. Butley and Benball. The question was, Whether renting a *windmill* at 14l. a year, gained a settlement? it having been determined that a *watermill* did. It was said, those are always habitable, but the others often are not. But by the court: It is the same as if he had rented land of that value. 1 *Seff. C.* 320. *Burr. Sett. Cas.* 107.

H. 12 G. Stone and Kniver. Upon a special order of sessions, it was stated, that the pauper rented a *coney-warren* and a cottage upon it at 10l. a year, which the justices were of opinion did not gain him a settlement. But by the court: A *mill* hath been held to be a tenement within the statute, and why not this? It is his ability to pay 10l. a year, that is the foundation of the settlement; and whether he pays it for a house of habitation, or for a warren which brings him in a profit, is not material; the order of sessions must be quashed. *Str.* 678. 2 *Seff. C.* 109.

Renting a coney warren gains a settlement.

Also in the case of *K. v. Piddletrentthide (a)*, it was de-

(a) See this case more at large, *post*, this same title.

Renting a fishery and spear-sedge, &c. gains a settlement.

terminated, that renting a rabbit warren, though the party taking it have no interest in the soil, except that of entering upon the warren to kill rabbits, will give a settlement. *Durnf. and East*, 3. V. 772.

T. 26 G. 2. *Old Alresford and Chilton Candover*. Two justices removed *John Dorey* and his wife and children from *Old Alresford* to *Chilton Candover*. The sessions quashed the order, and stated the following case: That the pauper and his father resided in *Old Alresford* under a certificate from *Chilton Candover*; that the father rented a house and piece of land for several years at 3l. a year in *Old Alresford*, and during two years he held, under a parol agreement, the fishery of *Alresford pond*, with the grates, &c. containing about 60 acres, and also the spear-sedge, flags, and rushes growing in and about the said pond, and the right of cutting the sedge growing on a piece of rough meadow containing seven acres, not being part of the said pond, for which the father paid to Mr. *Edwards* 10l. a year, and was to supply his house with fish: That during the time the father held the said premises of Mr. *Edwards*, he rented under a parol demise the fishery of *Causeway river* in *New Alresford* with the grates to a fish-house there at 3l. a year: That the said house and piece of land first mentioned, and the right of cutting sedge, &c. on the said seven acres of rough meadow ground, and the said fishery, &c. last mentioned, were together of the annual value of 10l. without taking the said pond, or any thing therein belonging, into the account.—The counsel for *Old Alresford* offered to prove that Mr. *Edwards* had no right to demise the fishery of the said pond, but the court thought such evidence was inadmissible, and refused to hear the same.—*L. Mansfield*: Upon this state of the case the court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute.—*Asbhurst J.* There is no doubt but that a fishery is a tenement: Trespass will lie for an injury to it; and it may be recovered in ejectment.—*Buller J.* The court go upon this ground, that the sessions have no occasion to go into the title of the lessor at all; the fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement: The sessions however ought only to admit evidence to controvert the fact of the pauper's taking the tenement.—Order of sessions affirmed. *Caf. by Durnf. and East*, 358.

E. 3 G. 2. Minchingbampton and Bisley. Order specially stated: The pauper rented, in the parish of *Bisley*, lands of the yearly value of 8l. from his father, an house of the yearly rent of 1l. 10s. from his uncle, and the same year took the pasture of a piece of land in the said parish from *All Saints day to Candlemas*, and paid 12s. for the same, which piece of land was worth 6l. a year. It was urged, that this was a good settlement; because during those three months the man was not removeable. But in this case, the court held, that taking the pasture of a piece of land was not more than taking the herbage, or than taking the common, which could not be esteemed part of a tenement within the meaning of the statute; but seemed to think, that if the words had been, that he had taken a pasture ground for three months, that would have made a good settlement. But the case went off upon another point, namely for want of an adjudication. 2 *Seff. C.* 132. *Ser.* 874. *Burr. Settl. Cas.* 316.

Taking pasture only, gains no settlement.

H. 26 G. 3. K. v. Whinley. Two justices remove *Thomas Potter* and his wife and four children from *Whinley* to *Healough*. The sessions discharge the order, subject to the opinion of the court on the following case: That the pauper served an apprenticeship to *Richard Potter* in *Whinley*, who was then residing there under a certificate from *Bickerton*. That in the two last years of the pauper's apprenticeship, his master rented a dwelling-house, garden, &c. of the value of 1l. 11s. 6d. a year, and also a meadow of 7l. 10s. a year, and also at the same time, namely for the two last years of the said apprenticeship, occupied two cattle-gates of the value of 1l. 4s. a year in a stinted pasture, on condition that the said *Richard Potter* (being a carpenter) should keep in repair three common highway gates, which the persons having a right to the cattle-gates were bound to sustain. — The question for the opinion of the court was, Whether the said cattle-gates were a tenement within the statute? — In support of the order of sessions it was urged, That these cattle-gates are not like commons: They are conveyed by lease and release: The owners of them are tenants in common; they have a joint possession, and several inheritance, and are as much demiseable as any several tenement whatsoever. It was answered, That he occupied these cattle-gates on condition of keeping the highway gates in repair, and that this was only a licence to depasture his cattle in consideration of his keeping the said gates in repair; and it was insisted that the *K. v. Lockerley (a)* could not be distinguished from

Renting cattle-gates gains a settlement.

(a) *Posb*, this same head.

the present case, and also that the case of *Lindwood*, in *Bott.* 348. was in point.—*L. Mansfield* said, These cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds. They are therefore to be considered as a tenement within the statute.—*Buller J.* said, That the case of *Lockerley* was better reported by *Burrow* than by *Bott.* In the latter the case was unintelligible. The court in that decision seems to have gone a great way; for they reject the words “let and demise,” and “dairy;” and say that the contract related to cows. But the best reason for that decision seems to be that part of it where they held, *that it was not a lease of land or of any thing out of land*, for it was only a right to the milk of the cows.—Order of sessions affirmed. *Cas.* by *Durnf.* and *East*, 1 *V.* 137.

Renting hay-grass and after-math gains a settlement.

B. 28 *G.* 3. *K. v. Stoke.* The pauper rented a house and land of the yearly value of 8l. 12s. 6d. in the parish of *Barlaston*, where he then resided; and for ten months of the same time, he took the hay-grass and aftermath of a meadow in the same parish, for 2l. 5s. 6d. He paid no taxes, but he fenced the meadow, and spread the hicks himself. He was removed from *Stoke* to *Barlaston*, which was quashed on appeal; and a rule having been obtained to shew cause why the order of sessions should not be quashed, *Leycester* shewed cause, insisting that the agreement for the hay grass and aftermath did not convey to the pauper any interest in the soil, and that that interest which did pass was not a tenement within the statute so as to give the pauper a settlement.—*Swinnerden*, *contra*, was stopped by the court.—*Ashhurst J.* It is clear from the stating of the case, that the land was intended to pass; it states, “that for ten months the pauper took the hay-grass and aftermath of the meadows.” Now why should he have taken it for ten months if the soil was not intended to be conveyed? There could be no other profits of this ground but the hay-grass and aftermath; and if a man grant all the profits of the ground, he grants the land itself.—*Buller J.* This is like the case put in *Co. Lit.* where *pastures* carries the land itself. The pauper was to have the hay and aftermath, which was all the produce of the soil. This is not like taking hay-grass after severance, for that is only a chattel; but here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that, he was to have every thing that grew on the land for ten months.—*Grose J.* of the same opinion.—Rule absolute. *Durnf.* and *East*, 2 *V.* 451.

T. 31 G. 3. K. v. Brampton. The pauper *T. Gaile* rented certain premises in *Brampton* in *Cumberland*, of the yearly value of 9l. and during part of the time took the fogg, or after-grass of two fields, the one for 30s. the other for a guinea a year; the whole of which together he occupied for more than 40 days. The sessions confirmed the order, by which he was removed from *Penrith* to *Brampton*. On a rule to shew cause why the order of sessions should not be quashed, the court were clearly of opinion that the pauper gained a settlement in *Brampton*; and that this could not be distinguished from the above case of *K. v. Stoke*. And they added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement. Order of sessions confirmed. *Durnf. and East, 4 V. 348.*

Renting fogg or after-grass, gains a settlement.

In the case of *Lockerley v. Shirefield English, H. 25 G. 2.* it was determined, that renting a dairy and the use of sixteen cows at 3l. 5s. for every cow did not gain a settlement; because, as the court said, a tenement must lie in tenure, and relate to land; whereas this was a mere personal contract for the use and feeding of cows. *Burr. Settl. Cas. 315.*

Renting a dairy and the use of cows, gains a settlement.

But in the following cases of *K. v. Piddletrenthide*, and *K. v. Tolpuddle*, it hath been determined otherwise.

T. 30 G. 3. K. v. Piddletrenthide. *John Belly* and his wife and family were removed from *Chaldon Herring* to *Piddletrenthide*, both in *Dorsetshire*. The sessions confirmed the order, subject to the opinion of the court on the following case: That for two or three years, while the pauper lived in *Chaldon Herring*, he rented in that parish a dairy of thirty cows, some at 5l. 10s. and others at 5l. per cow, with liberty to cut furze on *Grange Warren*, and on other parts of the farm, for the use of the dairy only; and a warren to kill rabbits for his profit, called *Grange Warren*, with a small house on it to keep nets, in the same parish, of the same man, at 30l. per annum; and also another rabbit warren in the neighbourhood for the same purpose, at 1,1. per annum. The cows were to feed in particular grounds at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in *Grange Warren*. The pauper had no right in the soil of either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same, and plowing some part thereof.—*L. Kenyon Ch. J.* If we were now called upon for the first time to make a decision on this statute, perhaps I should have some difficulty

on

on the subject; but the courts have put a liberal construction on it. I cannot quite agree with the above determination of *K. v. Lockerley*; because after it had been decided in so many cases that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. But without considering that case, I think that the pauper took a tenement in *Chaldon Herring*, both by renting the dairy and the warren. *L. Coke* says, that *prima tonsura* is a tenement: then the dairy was a tenement. The other taking was also sufficient; for it was, if I may use the expression, a perannuity of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to that of the *K. v. Lockerley*, perhaps I should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice) I think that the pauper gained a settlement in *Chaldon Herring*.—*Astbury J.* It seems difficult to reconcile all the cases on this subject. If the *K. v. Lockerley* be law, I do not see how this pauper can have gained a settlement in *Chaldon Herring*; but as there are authorities both ways, I am inclined to think that a settlement was gained in *Chaldon Herring*; the criterion, by which the question is to be decided, being the ability of the person taking the tenement.—*Buller J.* In all doubtful cases one leading ground is, the ability of the pauper to pay the 10l. *per annum*. But on the facts here stated, I think this person rented a tenement within the construction of the statute of *G.* I cannot agree with the determination of the *K. v. Lockerley*: That was considered as a personal contract; but all contracts are in some respects personal. The question in such cases really ought to be, whether or not it be a contract to receive profits out of land. The present I consider as such; and so was that in *K. v. Lockerley*. I am therefore of opinion, that the conclusion drawn in that case was wrong. As to the other point, I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let; otherwise the contract between the landlord and the tenant would be destroyed. In that respect then the pauper had an interest in the land. Besides he took a house with the warren.—*Grose J.* It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which that of *K. v. Lockerley* was decided.

In these cases I think, that if the pauper had credit to rent 10l. *per annum*, he gains a settlement. The case of *Kniver v. Stone* (a) decides the present.—Both orders quashed. *Durnf. and East*, 3 P. 772.

And also in the case of *K. v. Piddletrethide*, E. 32 G. 3. G. Hill and his wife and family were removed from *Puddletown* to *Tolpuddle* in *Dorsetshire*, which was confirmed at the sessions, subject to the opinion of the court on the following case: *J. Chapman* was the tenant and occupier of a farm in *Tolpuddle*, part of the stock of which farm consisted of cows, which according to the usual course of husbandry in that county had been constantly let to some dairy man. The pauper rented, under a verbal agreement, twenty of these cows of *Chapman* at 3l. 10s. *per cow per annum*; it was also agreed between them (as is usual there) that the owner of the cows should feed and support them, and that they should depasture in certain lands called the *Cow-leaze Grounds* from *May-day* till the 18th *September*, and afterwards in certain meadow grounds which are kept for that purpose from the time the same are mowed; both which grounds were part of the said farm, and then in the occupation of *Chapman*; and when the pasture of the meadow grounds was consumed, that the cows should be kept by *Chapman* in some other of the farm grounds with his other cattle, or be foddered in the farm yard with hay by him. The *Cow leaze* was not to be fed upon by *Chapman's* cattle from *Lady-day* till *May-day*, nor was he to feed any other cattle either in the *Cow-leaze* or meadow ground whilst the same were fed by the cows so rented. But the hay of the meadow ground was cut and taken away by *Chapman*, and the *Cow-leaze* was fed by him after the cows had quitted it, and he was to repair the fences. In case any cow did not calve before *May-day*, or afterwards, if any of them died or became barren, an allowance was to be made to the pauper; and in case of sickness amongst the cattle, *Chapman* was to defray all expenses. The pauper was also to have a dwelling house, and a right of feeding a mare on the farm, and keeping his pigs in the yard, and of cutting fuel for the use of the dairy; but he had no other right whatever. The pauper had this farm for 5 years, and resided during the whole time in the said house in *Tolpuddle*. The above are the usual terms of letting such farms in that county, and is called a letting of a dairy.—*L. Kenyon* Ch. J. It is certainly very much to be wished that the decisions of the magistrates below should, on examination here, be found to be consonant to the laws of the land. And I am happy to

(a) *Ante*, this same title.

find that we are relieved from the supposed inconvenience of sending down a new code of laws to the country where this question arose; because our opinion concurs with that formed by the justices in their sessions, as well as that of the justices who made the original order. From the passing of the statute of C. 2. to the present time the construction put on it has been (what is called) a liberal construction, in order to confer a settlement on those persons who have the ability to take a tenement which the statute has established as the criterion. I confess, it seems to me impossible to reconcile the decision in the above case of *K. v. Lockerley* with our determination in this case that the pauper gained a settlement in *Tolpuddle*; but if we are of opinion that that case cannot be supported, it will be more manly to say so in express terms, than by endeavouring to make nice distinctions, to induce the magistrates below to consider it as an authority hereafter. When the above case of *K. v. Piddletrentside* came before us, we all doubted of the decision of *K. v. Lockerley*; but there being another distinct ground upon which we were warranted in supporting the settlement, we were not directly called upon to over-rule that case. But now it being impossible to distinguish between this case and that, I think we are bound to deny the authority of that case, and to substitute in its room a better exposition of the statute C. 2. It has been argued, that if we decide this to be a tenement, we shall depart from the words of the statute: but in this case the pauper took a tenement, emphatically a tenement. Any thing is a tenement, which is a profit out of land. In order to take a tenement, it is not necessary the party should have the fee simple or fee tail; any minute interest in land is parcel of a tenement; such minute interest, indeed, cannot be entailed; but all the parcels when consolidated together may. A beast gate has been held to be a tenement; and yet that is not the whole land, but the profits of the land to a certain amount. So here the profits of these lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own, and he had rented the feeding of them, that would have been unquestionably a tenement, like the taking of the pasture, the hay, and after-math: And I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his, that he might use them under the contract for a limited time. And this was not the less a taking of a tenement; because the pauper could only enjoy the land in a particular mode; for in many farms the tenant stipulates that he will

not

not depasture sheep or horses on particular grounds. I do not see therefore why this is not, strictly speaking, a tenement; for the pauper had for a certain part of the year the exclusive right to the pasturage of these grounds, to be taken by the mouths of the cattle. The other judges delivered their opinions at considerable length to the same effect.—Both orders confirmed. *Durnf. and East*, 4 V. 671.

By the 13 G. 3. c. 84. A person renting turnpike tolls and residing in the toll house, shall not thereby gain a settlement. s. 46.

Renting turnpike tolls gains no settlement.

As to, *Whether it shall be one intire tenement?* It hath been adjudged as follows:

Need not be one intire tenement.

M. 1 G. North-Nibley and Wotton under Edge. A person rented an alehouse at 5l. a year, at *Lady-day*, for 6l. a year; and in *May* following rented a piece of land for 6l. a year; held the same for two months, and ran away. It was held, that it was not necessary the messuage or tenement should be rented of one person; though it be rented of several, yet in him it is but one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10l. a year. *Cases of S. 86. 1 Sess. C. 73. Fol. 79.*

Furthermore: It is to be considered, How far the same tenement, but lying in different parishes, shall gain a settlement: As to which it hath been adjudged as follows:

Same tenement, but lying in different parishes.

T. 3 G. South Sydenham and Lamerton. A person rented a tenement of 10l. a year, being one intire tenement, but lying in two parishes. The question was, Whether this gained a settlement? By the court: If the tenement be intire, though the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8l. lie in one parish, and a tenement of 3l. in another. *Str. 57. 1 Sess. C. 115. Foley, 81.*

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10l. but lying in different parishes, shall gain a settlement? So that the determination in this case, as to this latter point, was extrajudicial. And the reason given by the court in this case doth extend as well to different tenements, as to one intire tenement, viz. The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a
tenement

tenement of 10l. a year: now the man's sufficiency is not the less, because 6l. a year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10l. a year in any one parish, and it would be hard to adjudge that therefore they gain no settlement. *Str. 58. Foley, 81.*

M. 3 G. 2. Eyles and Hollibourne. The case was this: A person rented a tenement, consisting of a farm house and lands of 12l. 10s. a year; which house and land laid contiguous, and had been usually letten together, and occupied by the same person, but the house and so much of the land as together amounted to 9l. a year, lay in one parish, and 3l. 10s. in another parish. By the court, This was held to be a settlement, on the authority of *South Sydenham and Lamerton. 2 Sess. C. 130. Str. 849.*

Different tenements and lying in different parishes.

Further yet; it remains to be considered, how far two distinct tenements, one being in one parish, and another being in another parish, shall be deemed a sufficient tenement within the act, whereby to gain a settlement: For although in the case of *South Sydenham and Lamerton* aforesaid, the court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed) was not the point in question. And in the case of *Sandwich and Studland, E. 8 G. 2.* it was resolved as follows: A person rented a house in *Studland* at 30s. a year. After he had lived in it about two years, he took lands in *Langton* of 12l. a year, on which there was no house; and occupied the said lands two years: All which time he inhabited in and rented also the said house in *Studland*. By the court: It hath been a question, Whether two distinct tenements taken at different times (where neither of them alone amounted to 10l. a year in value) should make a settlement? But it is now settled that it does. And it is the same thing whether the taking was distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives. The ground of these resolutions is, the ability to rent a tenement of such a value; which excludes the presumption of his being likely to become chargeable to the parish. *Burr. Sett. Cas. 44.*

E. 8 G. 3. St. Lawrence and St. Maurice both in Winchester. Richard Gradidge, husband of the pauper, rented a tenement of one Henry Warne in the parish of *Hursley* for a year from Lady-day at 3l. 10s. a year, but resided therein five or six weeks only, and then quitted it, and tendred the key to the said Henry Warne, which Warne refused to accept; whereupon Gradidge left it with a neighbour, before Midsummer-day then next, for the said Warne to take it

it when he thought proper. On the said *Midsummer-day*, *Gradidge* took a tenement in the parish of *St. Maurice*, at the rent of 9l. year; and on the same day entered into possession thereof, and resided thereon above forty days, before the key in *Hursley* was received by the said *Warne*, who did not accept it till the 16th of *August* following. It was objected, that although it be settled, that if a person rents a tenement in two different parishes, amounting to 10l. a year in the whole, he shall gain a settlement in that of the two parishes in which he resides; yet still, in order to gain a settlement, he ought to be the joint occupier of both tenements within the same period: Whereas here, the first contract was dissolved from *Midsummer* at least, if not sooner. The landlord took back the key on the 16th of *August*, which relates back to the abandonment some time before *Midsummer*. But by the court: Here is a contract for a year in *Hursley* not dissolved; nor could it be dissolved: The landlord refused to accept the key: And he did not receive it at last till the middle of *August*, which was more than forty days after hiring the second tenement. *Burr. Sett. Cas.* 588.

Under the yearly value of 10l.] If the tenant is under 10l. a year, the justices upon complaint within 40 days have power to remove the person coming there to reside; if it is not under 10l. a year, they have no power to remove him; and continuing upon the same unremovable for 40 days, he thereby gains a settlement. Of the yearly value of 10l.

Upon which it is observable, that the payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due. For the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided 40 days, he is settled without more; even as a servant hired for a year, became settled in 40 days, before the statute of 8 & 9 W. and as apprentices are still settled in 40 days, without any regard to serving out their time. And with respect to what shall be deemed a tenement of 10l. a year, sufficient to gain a settlement, it hath been adjudged as follows:

T. 3 G. South Sydenham and Lamerton. Order specially stated: A person took a lease of a tenement for 99 years, determinable on three lives, and paid his fine, and the rent reserved was but 7l. but the real value was 13l. By the court: The quantity of the rent is not material, but the value of the tenement. If there be a lease of lands worth 10l. a year, and a fine be paid, and 20s. only reserved, it makes

The rent is not material, if the tenement is of the value of 10l. a year.

makes a settlement; so if no fine be paid, or no rent reserved, yet if the tenement is worth 10l. a year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent. 2 Sess. C. 198. Str. 57.

H. 13 G. 2. Southwold and Yokesford. A person took an house at the yearly rent of 10 l. The landlord agreed to make new buildings; which improvements were never made. The house, without the improvements, was worth only 6 l. 10 s. a year. By the court: The sessions must judge upon the facts; they have stated that the agreement was for 10 l. a year; this is evidence of the value; but the justices have a right to enquire into the real value; and they have expressly stated as a fact, that this house was only of the value of 6 l. 10 s. a year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore it was adjudged that this was no settlement. 2 Sess. C. 198. Str. 57. Burr. Settl. Cas. 140.

T. 14 & 15 G. 2. Weston and Kirton. Case specially stated: A person took a farm at Kirton of 10 l. a year, which had been let at that rent for five or six years then last past, but before that time was let at 7 l. a year only. When he first took and entered thereon, he was not of ability to stock the same. Before his entry, he was told by the former tenant, that his farm was too dear. To which he answered, That he did not regard the dearness; for as it was 10 l. a year it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but desired the said former tenant to take no notice thereof to any body. By the court: We are not to determine the matter upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10 l. They state, that he did take a tenement of 10 l. a year at Kirton. Indeed they add, that it had been let at 7 l. a year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10 l. a year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, That he did it to gain a settlement. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10 l. a year, and the evidence rather

proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. Therefore it was adjudged, that hereby he gained a settlement at *Kirton*. 2 Sess. C. 141. Sir. 1156. Burr. Sett. Cas. 166.

H. 16 G. 3. K. and Biltsdale Kirkham in the north riding of the county of *York*. *Thomas Wilson* went from the parish of *Biltsdale Kirkham* to *Biltsdale Westside*, and there married *Sarah* the pauper, who then rented a tenement of 4 l. a year, and he occupied the said tenement with her during his life. He afterwards died, leaving the said *Sarah* the pauper. Evidence was offered to prove this tenement at the time the man occupied it with his wife was worth 15 l. a year, tho' let at no more than 4 l. But the sessions rejected this evidence, and determined on the rent actually reserved; which being under 10 l. a year, they adjudged that the pauper was not settled in the parish of *Biltsdale Westside*, by renting such tenement. By *L. Mansfield*: The justices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10 l. a year any year during the man's occupation of it, he will thereby gain a settlement. The case was sent back to the sessions to receive evidence of the value. Which being certified as above, the court held it a good settlement. *M.S.*

E. 26 G. 3. Ashburton and Woodland. Two justices removed *Thomas Gufwell* and his wife and children from *Ashburton* to *Woodland*. The sessions confirmed the order, and stated the following case: That the pauper was a day-labourer and settled in *Woodland*. That he rented a cottage at 1 l. 12s. per ann. in *Ashburton* where he resided: That while he so rented it, about *October 1782*, he took a meadow for one year in *Woodland*, at the rent of ten guineas, of one *Northcote*, who rented the same, together with other lands of *Mrs. Taylor*. That the pauper did not stock it at all, but at *Christmas* let the grass for three guineas to *Ed. Barter* (without the privity of the said *Northcote*) until *Lady-day* following, who stocked it and paid the rent to the pauper. That the pauper after that (but not on the same day) paid *Northcote* five guineas for half a year's rent. That there were several persons who offered to take the grass of the pauper before he let it to *Barter*. That the pauper let the third or mow to the said *Northcote* for five guineas, and the after-grass for two guineas.

Renting to 1. a year without stocking it deemed fraudulent.

That at the end, when they settled accounts, the pauper received two guineas, the balance between them after allowing five guineas for the half year's rent then due. *Northcote* did not apply to the pauper to take the ground, but the pauper to him, and he readily trusted him, assigning as reasons, that he believed him to be an honest man, tho' a day-labourer; and that he had heard just before he let him the ground, that the pauper had received a legacy equal to the year's rent. That *Northcote* frequently made a practice to take ground and let it out again in parcels. That three years previous to the taking the said ground, the pauper received relief from *Woodland* on account of sickness; and about half a year after the expiration of the term for which he took this ground, his wife received relief from *Woodland*, he being sick in *Exeter* hospital. That he made a fresh agreement for taking another field of *Northcote* of 13 l. *per ann.* on the morning of the day he was examined before the justices touching his settlement. The sessions were unanimously of opinion, That the *said taking of the said field was fraudulent*. *Clapp*, in support of the order, said, That fraud is a fact, and not an inference of law; and where the sessions have expressly found fraud from the evidence, this court will not draw a different conclusion, even tho' the case state all the facts particularly; and cited *K. and St. Nicholas in Harwich*; and he said there was a distinction between this case and *K. v. Tedford*, which was merely a construction under the 9 G. 1. whether the purchase was fraudulently made to defeat the act; that was held not to be a *fraud in point of law*; but here, if the court overrule the decision of the justices, they must find no fraud in *point of fact*. Here the only part of the case on which the other side can rely, is the evidence of *Northcote*: The justices could never intend to state *Northcote's reasons* for letting this tenement, *as facts*; for they could not adjudge it to be a fraudulent taking, when the reasons assigned for such taking, admitting them to be facts, would negative it. This therefore being only evidence must be rejected; and on the rest of the case the court will see no reason to overthrow the decision of the sessions. — *Fanshaw, contra*, contended, that where the sessions only find fraud *generally*, this court is bound by such finding; but whenever the sessions state facts fully and particularly from whence they infer fraud, it is the province of this court to draw their own conclusions from those facts, without having regard to the adjudication of the

the court below ; and cited *K. v. Tedford (a)*. The only question then is, whether all the facts are fully before the court ? which must be taken for granted ; and if so, whether the court will not say, that the conclusion which the sessions have drawn is wrong ? Whatever might have formerly been the custom, it is the practice of the sessions now to state *evidence as well as facts*, and this court will form their judgment from both. Then taking the whole of this case together, it is impossible to support the decision of the sessions. It is stated that this man had credit in the parish for ten guineas a year ; it was so notorious that he was the real tenant, that several persons applied to him to take the winter grass, and one actually took it of him. The evidence does not state any conspiracy ; it was a fair under-letting, and the mere circumstance of its being under let affords no presumption of fraud. *K. v. Llanvunas (b)*.—*Willes J.* delivered the opinion of the court : That they did not think it necessary in this case to give an absolute opinion upon the general question, whether, when the sessions have stated all the facts particularly, and drawn a conclusion of fraud from those facts, this court have a right to examine into the propriety of such conclusion ; because they were all of opinion, that the conclusion of the justices upon the facts stated, *that it was a fraudulent taking*, was right. Order of sessions affirmed, *Cas. by Durnf. and East*, 261.

M. 32 G. 3. K. v. Llanwinio in Carmarthenshire. The court said, that when the sessions draw the conclusion, and expressly state *that the taking was fraudulent*, it is decisive. *Durnf. and East*, 4 *V.* 437.

M. 27 G. 3. Bedworth and Fillongley. Two justices removed *Mary Watson* widow, and her five children, from *Bedworth* to *Fillongley*. The sessions confirmed the order, and stated the following case : That *John Watson*, late husband of the pauper, rented a farm of 40 l. a year at *Fillongley*, and being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep, with which he came to *Bedworth* about *Lady-day* 1783, where he took a house and land of 8 l. a year rent, and resided thereon about three years ; during which time the rent was paid thus, (*viz.*) the first half year by himself, the second half year by the parish of *Fillongley*, the third half year by himself, and the fourth by a distress : That about the said *Lady-day* 1783, *Thomas Watson*, in a conversation with his brother *John Watson*, concerning

Where the sessions state the taking to be fraudulent, it is conclusive.

Living upon a tere rent of the value of 20 l. a year, altho' a part thereof is given out of charity, gains a settlement.

(a) *Post*, title Settlement by estate. (b) *Post*, this title.

his family and poverty, said, "I am sorry for your family, and therefore I will give you a close in *Astley* (an adjoining parish) containing about four acres, to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it:" *John* enjoyed the said close, which was worth 2 l. 10 s. a year, for three years, during which time his brother *Thomas* paid both the land tax and poor rates for the same; and all the tillage was done by the servants and horses of *Thomas*, and they also got in the harvest: That one year the said close was sown with *John's* wheat procured by the gleanings of his family; and in the last year the same was sown with *Thomas's* corn, at whose expence the crops of the said corn were carried to *John's* house: That the cattle of *Thomas* were never put into the said close, except for tilling the land; but that the cattle of *John* were upon the said close during the time he so enjoyed it.—*Asbburst J.* In all cases upon settlement law, it is the safest way to adhere to the words of the act; now taking it upon the words, nothing can be more clear; they are "that it shall and may be lawful upon complaints made by the churchwardens, &c. within 40 days after any person or persons coming to settle as aforesaid in any tenement under the yearly value of 10 l. for any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove, &c." The act does not say any thing about *ability*; that is not the *criterion*. And if the party comes to reside upon a tenement of 10 l. a year, he cannot be removed, and then he gains a settlement by 40 days residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*; yet if a man has sufficient credit and confidence reposed in him by another, as to be trusted with a tenement of 10 l. a year value, even out of charity, it is sufficient to answer the intent of the statute, because such an one is not likely to become chargeable. Therefore neither upon the words, nor the meaning of the act, was this man removable, and so he gained a settlement.—*Buller J.* It is admitted that this is the first case which has come directly before the court for a construction on this part of the statute. Now the words of the act cannot admit of a doubt. They only speak of persons coming to settle in a tenement of 10 l. a year, who cannot be removed. As to the question of fraud, I feel no force in that, because that question is open to the sessions in every case as it arises: Besides, it is the peculiar jurisdiction of the justices, and not of this court, to say, whether

whether the particular case be fraudulent or not; if they do not adjudge it to be fraudulent, it is not competent for this court to say that it is. I doubt whether in this case the order of sessions might not be founded on the idea *that it was fraudulent*. If they had said so, we should not have differed from them, but they have not found it so. Next, as to the question of *ability*: It seems to me that this idea is founded chiefly on the words of *Soub Sydenham* and *Lamerton* (a); but the words, if attentively considered, will not warrant the construction put upon them; for the credit which he has is only for the rent he has to pay, but that is only as between him and the landlord; the credit is given by the landlord. L. Ch. J. *Parker* first says, "If a man hires a house at a small rent, and pays a fine, yet if the house is worth 10 l. *per ann.* it makes a settlement, for the settlement depends on the value of the tenement, not on the *rent*." Then indeed he uses these words, "the reason of this statute is this; that the man who is intrusted with a tenement worth 10 l. a year, is of such credit, and must have such a stock, as makes him not likely to become chargeable to the parish."—*Eyre J.* took it to be within the letter and intent of the law, "that a man who is capable of renting a tenement of 10 l. a year should be settled in that parish." It is clear that they applied this reasoning to the persons mentioned in the former part of the act, to shew that that case did not come within the description: And this is put out of doubt by what *Pratt J.* says; "The mischief recited by the statute, and intended to be prevented, is *vagrancy of poor persons* who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, (*viz.*) *such persons as are not capable of hiring a tenement of 10 l. a year*." Now it is material to consider, what was the case on which the court were then speaking; they were speaking of a case where the taking was of *more* than 10 l. *per ann.* therefore these expressions only relate to cases of above 10 l. *per ann.* and are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10 l. *per ann.* This is more decisive on account of what is said in the conclusion of the case; where describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt J.* says, "such persons as are not capable of hiring a tenement of 10 l. a year." There are no such words in the act; but if we

(a) *Ante*, this same title.

have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthenome to the parish: These therefore are the persons of whom the statute speaks as likely to become chargeable, and therefore the expressions in that case are only to be considered as *particular instances of persons* who from their situation in life *were not likely to fall* within the description of persons in the preamble of the act. But one who is settled on a tenement of 10 l. a year is not within the act. It has been contended that the pauper never had the tenement; but it is impossible for us to say so, after the justices have stated that he had it under an agreement, which made him tenant at will; for what is to become of the estate after he had sown it with corn? Its being gained by gleaning is not material; for supposing he had stolen it, it would have been just the same, he would have been entitl-d to the growing crop: He was then in possession of a tenement of 10 l. a year, and could not have been turned out by his brother, therefore this is a sufficient taking of a tenement within the statute.—Order of session quashed. *Casf. by Durnf. and East.* 458.

With respect to the taking or occupying a tenement jointly, it has been determined as follows:

Renting 16 l. a
year jointly gains
no settlement.

M. 25 G. 2. Marden and Barham. Two persons jointly hired a house and land at *Marden* for 16 l. a year, and jointly occupied the house and tilled the land for the said year, and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited, between *Croft and Guinford* at *Durham* assizes 1733, which was a joint taking of 14 l. a year, each paying separately, the landlord not caring to let to either singly. And the two judges (*L. Ch. J. Eyre and Reeves*) to whom it was referred, held it no settlement; because the statute requires the person's taking a tenement of 10 l. a year value: Whereas this practice of calling in a partner in the taking, would, if admitted equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families all to be settled upon one tenement of 10 l. a year value. On the contrary it was argued, that each was legally tenant of the whole, both being liable to the landlord for the whole rent. By the court: This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one half, and that half doth not amount

amount to the value of 10 l. a year. *Burr. Settl. Cas.*

311.

T. 29 & 30 G. 2. *Little Tew* and *Duns Tew*. *Richard Guffhyns* the pauper, together with *John Goodwin* his father in law, rented a tenement at *Duns Tew* at 8 l. a year, as partners; and lived there 12 years. And being about to leave *Duns Tew*, *Goodwin* alone went to Mr. *Keck*'s agent at *Little Tew*, and took a farm of 52 l. a year, for 4 years. After the said taking, and before the farm was entered upon, *Guffhyns* inquired of *Goodwin*, whether he depended upon his going with him to *Little Tew*? To which *Goodwin* replied, that he did; for he could not go without him. They both removed from *Duns Tew* to *Little Tew*, with their whole joint stock, to the value of more than 100 l; and managed the farm together for 7 years, both of them residing thereon. Mr. *Keck* gave his receipts for the rent to *Goodwin* only; and once, when Mr. *Keck* distrained for rent, the distress was made upon the stock, which Mr. *Keck* supposed to be *Goodwin*'s only; and *Goodwin* alone gave a bill of sale of the stock; and *Guffhyns* then stood by without interposing. At the end of 7 years, just before the order of removal was made, *Guffhyns* went off from the farm, and *Goodwin* took the whole stock, allowing *Guffhyns* 62 l. for his moiety thereof. It was adjudged by the justices, that this being not a joint hiring, but a taking by *Goodwin* only, *Guffhyns* the pauper did not hereby gain a settlement. On removal of this cause into the court of King's bench, it was observed by the court, that the words of the statute are, *coming to settle in any tenement under the yearly value of 10 l.* That the agreement between the two farmers was, to occupy jointly, with a joint stock: That the case doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legislature to a man able to stock a farm of such a value: A tenant may let the whole, or even subdivide it out to under-tenants, who may thereby gain a settlement, if the tenement be above 10 l. a year: And where is the difference, between the original tenant's letting out part, and his taking in a partner?—And after having taken time to consider of it, the resolution of the court was, that *Guffhyns* gained a settlement in *Little Tew*. For, being taken in partner by *Goodwin*, he is to be considered as having an interest in the farm, at least as tenant at will to *Goodwin* of the moiety of a farm worth 52 l. a year for the whole of it, and consequently his moiety above 10 l. a year. A tenancy at will, even in the case of a certificate person, is sufficient

Renting jointly.
52 l. a year
gains a settle-
ment.

to gain a settlement, as was determined in the case of *Cranley and St. Mary's Guildford*, H. 8 G. Burr. Sett. Cas. 398.

Renting one entire tenement, and jointly part of another.

E. 33 G. 2. *Kniveton and Tiffington*. The pauper *Isaac Wibberley*, being settled at *Tiffington*, took a farm at *Kniveton* of 8 l. a year; and also at the same place, jointly with one *Thomas Hill*, took another farm of 3 l. 15 s. a year, and at the taking of the said farm of 3 l. 15 s. it was agreed between the said *Isaac Wibberley* and *Thomas Hill*, that *Thomas Hill* should have and take one half of the corn and hay of the said 3 l. 15 s. farm; and that the said *Isaac Wibberley*, after that the said *Thomas Hill* had taken and carried away his half part of the said corn and hay, should have the whole farm of 3 l. 15 s. till *Lady day* following, paying to the said *Thomas Hill* 4 s. for the said *Hill's* share of the said farm. The question was, Whether this was a tenement of the yearly value of 10 l.? The counsel for the parish of *Tiffington* argued, that *Wibberley* the pauper was liable (as being joint tenant with *Hill*) to answer for and pay the whole 3 l. 15 s.; and moreover, that he was sole tenant of that farm for and during the last half year; or, even taking it at the strictest, that he was really and properly to pay 10 l. 1 s. 6 d. a year; for he is to pay 8 l. and half of 3 l. 15 s. (which is 1 l. 17 s. 6 d.), and 4 s. more for the last half year, which is in all 10 l. 1 s. 6 d. But the court unanimously held, That this tenement, thus rented in *Kniveton*, was under the yearly value of 10 l. The act fixes the value at 10 l. And the value must be estimated by the rent, and always is taken to be according to the rent. And here the rent is 8 l. a year, and the half of 3 l. 15 s.; which two rents taken together do not amount to 10 l. Indeed, he was to pay *Hill* 4 s. for the advantage he was to have, after the crop was off: But an agreement of this sort, between the two joint tenants, cannot be considered as a rent. Burr. Sett. Cas. 499.

Renting a farm of 10 l. a year, and afterwards occupying it jointly with another person, does not prevent gaining a settlement.

T. 13 G. 3. *Aure and Newnham*. The pauper *Hatbaway Denton*, and one *Richard Mann* his wife's father, jointly rented and occupied an estate at *Newnham* of 80 l. a year, for three years. The said *Richard Mann* dying about the end of that time, the said *Denton* soon afterwards did, alone, take a house of one *Richard White* at *Aure* of the yearly rent of 3 l. and another estate consisting of lands of one *John Serjeant* at *Aure* aforesaid, at the yearly rent of 8 l. The said *Richard Mann* leaving a widow, and she and the said *Denton* being upon the death of the said *Richard Mann* jointly possessed of the remainder of the stock which had been on the estate at *Newnham*, they the

the said *Hathaway Denton* and the said widow went and lived at the said house at *Aure*, and jointly occupied that house and the said estate of 8 l. a year, for one year, the stock on the said house and estate being partly the property of the said *Denton*, and the other part the property of the said widow; and sometimes one of them sold some part of the said stock, and received the money for the same; and at other times, the other of them sold other parts of the said stock, and received the money for the same: And at the time of taking the said tenements by *Denton*, neither the said *Richard White* nor the said *John Serjeant* knew of any connection subsisting between the said *Denton* and the said widow. A moiety of the stock was more than sufficient to stock the said house and farm.—It was argued, that *Denton* did not gain a settlement in *Aure*; for though he had taken 11 l. a year, yet he came to settle upon only the half of 11 l. a year. And it appears upon the whole that he never took 11 l. a year for himself. It was admitted, that if the whole taking had been 20 l. a year or upwards, then indeed each joint taker would have gained a settlement: But as the whole in the present case amounted only to 11 l. each must be considered as coming to settle upon only the half of 11 l. Consequently, this man's settlement in *Newnham* remained, as he gained none in *Aure* by coming to settle on a tenement under the yearly value of 10 l.—Unto which it was answered, that the criterion of being likely or not likely to become chargeable is, the having credit to take a lease of a tenement of that value. A person fit to be trusted with renting a tenement of 10 l. a year, is supposed not likely to become chargeable to the parish. Here the pauper alone made the application to take the tenements; and he alone was personally responsible for the rent.—(*L. Mansfield* was not in court.) The other three judges declared themselves all thoroughly satisfied, that the settlement was in *Aure*. Mr. J. *Ashton* observed, that if two persons jointly take a tenement of less annual value than 20 l. this will not gain a settlement to either of them. But a man who takes more than 10 l. in yearly value, may let part of it to under-tenants: And this will not destroy his settlement, tho' it will not gain one to such under-tenants, who pay him less than 10 l. a year, as was determined in the following case of *Llandverres*. This woman, the widow *Mann*, was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house, and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and
he

he only was personally responsible for the rent. They were not partners in taking the tenement, tho' they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person who alone took it lose his settlement by letting in a joint occupier. *Burr. Settl. Cas.* 756.

Renting 10l. a year, although part of it is let off to under-tenants, gains a settlement.

M. 7 G. 3. Llanduerras and Northop. Evan Hughes, father of the pauper, rented a tenement of 10l. a year, and paid the rent to the landlord. He lived for above 40 days in a part of it, which part was of the value of 40s. only. And immediately after his taking the tenement, he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10l. a year value, and he ought to occupy the whole 10l. a year; otherwise, many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement.—By the court: In case of a gross fraud, the sessions no doubt would find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that *Hughes* was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10l. a year, and let lodgings. The act doth not require a person renting a tenement of 10l. a year to occupy it; it is enough if he rents it, and resides 40 days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10l.; therefore they do not hereby gain a settlement. *Burr. Settl. Cas.* 571. *Black. Rep.* 603.

Coming to a tenement by executors, altho' under 10l. a year gains a settlement.

But if a lease or interest in a tenement under 10l. a year, devolves upon a person by executorship or other act of law; this is not within the statute, as taking a lease of a tenement; but such person continuing upon the tenement 40 days irremovable, thereby gains a settlement. As in the case of *Uttoxeter and Marchington Woodlands, T. 5 G. 3.* The pauper, *William Gilbert*, was settled at *Uttoxeter*. His mother rented and resided upon a farm of 22l. a year at *Marchington Woodlands*; which she devised to her five children, and made the pauper and her three other sons executors of her will, and died. The pauper alone proved the

the will, and entered as her executor, and resided upon the farm 12 or 13 weeks. He afterwards returned to *Uttoxeter*; but continued to go over to *Marchington Woodlands* to give directions from time to time, and had a servant upon the farm till the *Lady-day* following. The question was, Whether he hereby gained a settlement at *Marchington Woodlands*? It was objected, that a person ought to come to the tenement by a lease or some contract with the owner. But an executor is not answerable personally and in his own property to the landlord; he is under no contract with him. Nor is here a sufficient residence. He stayed no longer than his trust of executorship required. He never meant it for a residence. It is like the *Scarborough* case between *Elvetham* and *Alton*; which was only a casual residence. Besides the value is not sufficient; for he was only entitled to a joint interest in 22 l. a year, with three or four other persons. So that his share is nothing like 10 l. a year. And his proving the will makes no difference; for the other three executors are equally entitled, and may prove the will as well as him.—By the court: It is very true, that a share not amounting to 10 l. a year, of a tenement of above 10 l. a year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremovably, doth thereby gain a settlement if he resides 40 days. *Burr. Sett. Cas.* 538.

E. 31 G. 3. *K. v. Netherseal*. *Thomas Taylor* and his wife and children wereremoved from *Finderne* to *Netherseal*. The sessions confirmed the order, and stated the following case:—That the pauper being settled in *Netherseal*, married the daughter of *J. Shipman* of *Finderne*, who rented and lived upon a tenement there of the yearly value of 11 l. The pauper and his wife continued to live in the family of *Shipman* until his death, which happened about 2 years after the pauper's marriage. *Shipman* made a will, and, after bequeathing to his son and an unmarried daughter, 5 s. each, gave the pauper's wife all the rest of his property and stock upon his tenement, of the value of upwards of 40 l. and appointed her executrix of his will. The pauper possessed himself of this property, and paid the above legacies about a year after *Shipman's* death. The pauper's children got the will out of a box and tore it to pieces. The pauper never proved the will on account of the expence, but continued with his wife the executrix to occupy the tenement in *Finderne*, from the decease of *Shipman* on the 9th of Nov. 1774, until the *Lady-day* following, and paid the rent for

Coming to a tenement by executorship, and residing thereon 40 days, altho' the will be never proved, gains a settlement.

the same.—*L. Kenyon* Ch. J. thought if the question had depended on the title, the pauper claimed under the will, it would not have been sufficient to give a settlement (a). But it being stated that the pauper resided for more than 40 days on a tenement of more than the yearly value of 10 l. for which he paid rent; although it was said that he might have been turned out of possession by some other person having a superior right; but it was not suggested who had any better title; and the landlord who received the rent could not turn him out.—*Ashburst* J. In order to acquire a settlement by taking a tenement of 10 l. a year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside 40 days on a tenement of such a value with the permission and consent of the landlord; for in such case the law implies a contract.—*Buller* J. Supposing there were no will in this case, the only persons entitled to the property of the pauper's wife's father, were the pauper's wife and her brother and sister; and if it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to shew that all the parties interested consented to the pauper's continuing in possession of these premises; for the other son and daughter received 5 s. each, in lieu of all their right and claim to their father's property. Therefore all the parties interested agreed to this occupation by the pauper; and consequently there is no pretence to say that this was a holding by wrong.—*Grose* J. of the same opinion. Both orders quashed. *Durnf. & East*, 4 V. 258.

Renting a tenement for less than a year.

It is observable, that the statute doth not say for what time he shall rent the tenement, but only of what value it shall be by the year. And in the case of *Gratwich and Shenstone*, E. 32 G. 2. a person took an house of 30 s. a year, in the parish of *Gratwich*; and 2½ acres of land in the parish of *King's Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, being 8 months, for 11 l.; and lodged the last 40 days before *Michaelmas* in the parish of *King's Bromley*. It appeared that he took them *bona fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged that he gained a settlement thereby in the said parish of *King's Bromley*. *Burr. Sett. Cas.* 474.

H. 6 G. 3. *Staunton under Bardon and Ulescroft*. The pauper *William Harrison* took a tenement from 1st June till *Lady-day* following, for 26 guineas, which he occupied ac-

(a) See this part of the case, *post*, title Settlement by estate.

cordingly, and paid the rent. The question was, Whether by continuing upon this tenement for 40 days unremovable, he thereby gained a settlement? And by the court, clearly, he did. *Burr. Settl. Caf. 558.*

H. 7 G. 3. St. Matthew's Bethnal Green and St. Botolph's Aldgate. John Fell, the husband of the pauper, hired a house for 5 months, for which he agreed to pay 4 l. He came and resided with his family there, during the said 5 months. And the house, at the time of hiring and entering upon the same, was worth, to be let, 10 l. by the year. It was argued, that this could not gain a settlement. The criterion, which is the ability of a person to hire a tenement of 10 l. a year value, fails in this case. For it doth not appear that this man had such a degree of credit as the statute requires. Besides that the proportion of 4 l. for 5 months falls short of 10 l. a year by about 8 d. a month. But by *L. Mansfield* and the court: The rent is not material, but the value. And we are concluded from treating this tenement as under 10 l. a year, by the finding of the justices, who have stated it as a fact, that at the time when he took it, it was of the value of 10 l. a year to be let. And it was adjudged that he thereby gained a settlement. *Burr. Settl. Caf. 574.*

Unless he (the certificate person) shall really and bona fide take a lease] *H. 8 G. Cranley and St. Mary Guildford.* Upon a special order of sessions it was stated, that a certificate man agreed with the lessee of a mill, that he should occupy the mill, and pay 12 l. a year; that there was no under-lease or assignment; but in pursuance of that agreement the certificate man occupied the mill 2 years, and paid the rent. The sessions adjudged it no settlement. But by the court: The order must be quashed; for if this be not an absolute lease for a year (as *Eyre J.* said it was, the rent being reserved as rent for a year), yet it is undoubtedly a lease at will, which is sufficient to gain a settlement. *Str. 502.*

A lease of a tenement] *M. 9 G. St. John's Hertford and Amwell.* A certificate man took a farm of 10 l. a year, part of which was in *St. John's* and part in *Amwell*; but the greatest part, together with the house, being stated to lie in the parish that received his certificate, the court held it a certificate there. *Sir. 529. Caf. of S. 148.*

H. 8 G. 2. St. Mary Callandre and St. Thomas. It was said, that these acts have been liberally expounded, and that renting 10 l. a year in different parishes will avoid a certificate. *1 Seff. C. 315.*

E. 4 G. 2. Case of Stapleford in Leicestershire. A person took 3 l. a year in the place he was certificated to, and 40 l. a year in the next parish, but lived where the 3 l. was; and it was held a settlement there. *Str. 849.*

E. 15 G. 2. Bewling and Bradford. A certificate person rented and resided upon a tenement of 9 l. a year in *Bewling*, and at the same time, rented lands of 1 l. 15 s. a year in another parish. It was objected, that in order to avoid a certificate, it is necessary to rent 10 l. a year in the parish where the certificate person inhabits; for the act says, that no person coming into any parish by certificate shall gain a settlement in such parish, unless he shall take a lease of a tenement of 10 l. a year, or execute an annual office *in such parish*. By the court: Renting 10 l. a year is only required in general, and is not confined to the particular parish: The words *in such parish* relate only to executing an annual office. And it is within the same reason (namely, the substance and credit of the man) whether he rents that value in one parish, or in different parishes. *Burr. Sett. Cas. 177.*

Upon the whole, notwithstanding what hath been so often mentioned above, as to the supposed *sufficiency* of the tenant to stock the tenement upon which he comes to reside, yet the statute takes no notice of that; and therefore, although it may be a good general reason to suppose that a person of such ability is not likely to become chargeable, yet such ability doth not seem to enter as any necessary ingredient into the settlement; and if the landlord will trust the tenant, it seemeth that the parish hath no remedy, unless the justices shall adjudge it a fraud. And in the case of *giving security* for the rent, it hath been determined as follows:

Giving security
for the rent.

T. 10 G. 2. Butley and Benhall. A person rented a windmill at 14 l. a year; but gave security for the rent: It was objected, that this was no settlement, for that the foundation thereof is the credit of the party, which fails in this case. But by the court: Giving security for the rent doth not alter the case; for he that has credit to give security, has credit to pay rent. *1 Sess. C. 320. Andr. 3. Burr. Sett. Cas. 107.*

And it may be observed upon this case, that it requires no great *ability* to stock a windmill.

xii. Of settlement by a person's own estate.

By the 13 & 14 C. 2. c. 12. *On complaint within 40 days after any person shall come to settle in any tenement under 10 l. a year, two justices may remove him.*

And

And by the 9 & 10 W. c. 11. *No certificate person shall gain a settlement, but by renting 10 l. a year, or executing an annual office.*

Upon which two statutes the following cases are considered:

1. *How far a person, having an estate of his own, though under 10 l. a year, shall gain a settlement thereby, within the said statute of the 13 and 14 C. 2.?* Person settled by his own estate.

E. 11 An. Harrow and Edgeware. A person settled at Harrow, went into the parish of Edgeware, and purchased a copyhold estate for life, and lived therein four or five years, and died. And as this was a tenement under 10 l. a year, the question was, upon the 13 & 14 C. 2. Whether this gained him a settlement at Edgeware? It was argued, that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10 l. a year. And by *Parker Ch. J.* and the court: Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, though less than 10 l. a year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement. *Folry, 257.*

E. 13 G. 2. Hasfield and Tirley. On a special order of sessions, relating to the settlement of a boy of eight years and a girl of six, it was stated, that the mother of these children had an estate of 4 l. a year in Tirley, where she and her husband lived and had these children: That she dying, the husband became tenant by the curtesy; and whilst such, he took 30 l. a year at Hasfield, and lived one year there with his two children, and then died: That the children being found with their grandmother at Tirley, were both removed to Hasfield; which order the sessions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quashed them as to the boy. For as to the boy, he was tenant in fee of the 4 l. a year. And though it was not stated, that he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it is otherwise; she could demand no maintenance out of her brother's estate; and it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled. *Str. 1131. Burr. Sett. Cas. 147.*

T. 7 G. 2. Sundriss and Hever. Thomas Perch, by indenture, demised to Thomas Gates the father a cottage at

5 s. a year, which was the full value, for 99 years. The lessee held it till his death, and devised it to *Thomas Gates* his son. And the question was, Whether the son, as executor, being intitled to the term, shall gain a settlement by inhabiting in such cottage? By the court: Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: Persons to be removed under the statute of *C. 2.* are those that wander from place to place, and not those who live upon their own estate: And adjudged that he gained a settlement. 1 *Seff. C. 200. Str. 983. Burr. Settl. Cas. 7.*

No right is vested until letters of administration are taken out.

E. 3 G. South Sydenham and Lamerton. A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there was the question: It was held not; he has only a right, which he must pursue by taking out letters of administration, and no right is vested in him till that is done. *Cas. of S. 103.*

T. 10 G. 2. Farrington and Widworthy. The pauper being settled at *Farrington*, removed to *Widworthy*, and lived there with his father in a cottage house of 30 s. a year, working as a day labourer. The father died intestate, possessed of the said cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper himself, after the father's death, continued in the cottage for five or six years, until the lease was determined: After which, and since the making out the order for his removal, he took out administration to his father. And the sessions quashed the said order, adjudging him to be settled at *Widworthy*. But by the court: At the time of making the first order, he had gained no settlement at *Widworthy*; because nothing vested in him before administration was granted to him. If so, then that order for removing him was a good order when made. And the sessions ought not to have quashed it; though administration had been afterwards taken out. For they could not quash a good order, upon a matter which happened *ex post facto*. If this administration really gained him a settlement, there ought to have been a new order of two justices to remove him again to *Widworthy*. But taking out administration after the term was expired, could never give him an interest in the expired term. And whilst the term subsisted, not having taken out administration, he was in possession merely as a tenant at will. He was removeable by the parish; and his right would have been without foundation if administration had been

been granted to any one else. *Andr. 4. Burr. Sett. Cas.* 109.

M. 22 G. 3. North Curry and Ruiston. Betty Winter, widow, and her four children, were removed from *North Curry* to *Ruiston*. The sessions quashed the order, and stated specially: That *John Winter*, late husband of the pauper, was before marriage settled at *Ruiston*; that soon after their marriage he purchased a cottage and garden in *North Curry*, of the yearly value of 20 s. for 14 guineas, which was demised to him, his executors, administrators, and assigns, for 99 years, or three lives, at the yearly rent of 2 s. That he and his wife resided in the said cottage for several years until his death; *Betty* his widow, and their said children, soon after became chargeable to *North Curry*, but were refused relief unless they would go into the workhouse, which they did, and quitted possession of the said cottage and garden, where they were relieved until they were removed to *Ruiston* in *February 1781*. *Ruiston* appealed at the *Easter* sessions 24th *April 1781*, which sessions was adjourned, and the said *Betty* soon after returned to the said cottage, and resided there till 28th *April 1781*, when she sold the said cottage and garden for six guineas for the residue of the term, and by indenture dated 28th *April 1781* assigned the said term. That on 11th *July 1781*, being the day after the 1st day of the present sessions, the said *Betty* sued out letters of administration of her late husband's effects.——*Gould*, in support of the order of sessions, stated the question to be, whether a person, having a sole right to administration, could by a residence of 40 days acquire a settlement before administration actually taken out, and argued that they might: But being called upon by *Buller J.* to distinguish this case from the above case of the *K. v. Widworthy*, he endeavoured to shew that there was a difference between a sole next of kin, and where several persons in equal degree have an equal right; here, the widow having before administration a specific right in the thing, could not be removeable; that there was only a ceremony necessary to make the assignment by her indefeasible; that in the case of *Widworthy* the pauper was not solely entitled to administration, but jointly with his brother.——*L. Mansfield* said, that this case did not materially differ from the case of *Widworthy*; as the children were entitled to two thirds of the effects, the widow is not properly, and in the sense of the cases, the sole next of kin. Order of sessions quashed. *Cal. Cas.* 137.

Also in the case of the *K. v. Netherfeal*. The pauper married the daughter of a person who occupied a tenement of above 10 l. a year, and died leaving three children, to two

of whom he bequeathed 5 s. each, and the third (the pauper's wife) he made executrix; to whom he gave the residue of his property, who resided thereon above 40 days, but the wife never proved the will.—*L. Kenyon Ch. J.* said, If the question had depended on the title which the pauper claimed under the will in right of his wife, I think the facts stated in the case would not warrant us in deciding that they could enforce any right under the supposed will; because the fact of there being a will should have been proved in a different manner. We cannot receive any other evidence of there being a will in this case, than such as would be sufficient in all other cases where titles are derived under a will; and nothing but the probate, or letters of administration with the will annexed, are legal evidence of the will in all questions respecting personality. *Cas. by Durnf. & East, 4 V. 258 (a).*

The husband of an administratrix entitled to the trust of a term only, gains a settlement.

M. 4 G. Murfley and Grandborough. Sir John Fortescue demised a cottage of 20 s. a year to one *Eden* for 99 years, reserving 12 d. rent: *Eden* assigns the term to one *Gadden* in trust for his wife for life, and then in trust for his son, during the remainder of the term: The wife dies. Afterwards the son dies, leaving a wife, who, as administratrix to her husband, became entitled to this term, and she grants this cottage for 24 years, excepting two rooms, in which two rooms she lives, and marries one *John Chappel*. The question was, Whether *Chappel*, as husband of an administratrix, who was entitled to the trust of a term only, and being entitled to a chattel in another's right only, was removeable by the 13 & 14 C. 2.? And by the court, he is not; this is not a taking of a tenement under 10 l. for the 12 d. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no settlement were quashed. *Str. 97. 1 Sess. C. 122.*

Living in a cottage which came to the pauper by descent, gains a settlement.

M. 11 G. Ashbristle and Wyley. A poor man built a cottage upon the waste belonging to my lord *Pembroke*, without his licence, who never offered to disturb the man in his possession, and he lived in this cottage for 30 years, and by his will left three guineas in the hands of his executors to purchase this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir at law, entered into the cottage, and after married one *Barrow*, and

(a) N. B. This case was determined upon other grounds; for which see title *Settlement by renting 10 l. a year.*

lived in the cottage, and they were in quiet possession for three quarters of a year, and then sold it. The question was, Whether the daughter, and her husband *Barrow*, had gained a settlement by virtue of this inhabitancy, in the parish of *Wyley*, in which their cottage was? Mr *Reeve* argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removeable by the lord of the waste; and if he might have been removed within 40 days, his long possession shall give no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, though never so long, could give him no settlement: And if the cottager had no right of settlement, none claiming under him shall be in a better condition. The statute of 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and shall have no privilege or encouragement. I admit if one inhabits by virtue of a lease, or other good title, for 40 days, he gains a settlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the court, who held it clearly to be a good settlement. And though it was further objected, that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession 40 days, he thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for 40 days; for in those cases, the justices of the peace cannot determine his right. This present case is very strong; for the 30 years possession of the cottager, without interruption, would have been a good title in an ejectment; and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order that the cottager had a good title in ejectment, and in any case but in a real action. L. Ch. J. *Raymond* said, he had known recoveries upon a 20 years quiet possession, and 20 years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the 30 years quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *prima facie* it is an inheritance in the daughter; and an estate by disseisin is in law a good estate, and

Living in a cottage, built without the consent of the lord of the manor, gains a settlement.

a fee simple, till it be defeated. Wherefore all the court held, that the justices had no jurisdiction in this case; for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good. 2 *Seff. C.* 115. *Str.* 608.

M. 9 G. 3. Bitton and St. Philip and Jacob. The pauper, *George Battman*, built a cottage upon the waste, without leave of the lady of the manor; was not rated, nor paid any taxes; but continued nineteen years and an half in possession. About 20 years ago, the pauper *Battman* was turned out of possession of the said cottage, by an ejectment brought by a person claiming the same under a mortgage thereof made by the said *Battman* for the sum of 15*l.* And some time after that (which was more than 20 years ago), the said *Battman* and the mortgagee sold the said cottage to one *Williams* for 28*l.*; and the said *Battman* had 5*l.* part of the purchase money.—It was urged, that this gained no settlement to *Battman* the pauper: That he had no right to this cottage, either legal or equitable. He had no leave from the owner of the soil to erect it. He never was rated, nor paid any taxes for it. The value of this cottage is not stated. If he had purchased it, for a consideration under 30*l.* it would not have given him a settlement after he ceased to inhabit it. But here he has only stolen it: And surely he ought not to be in a better condition as a thief, than he would have been as a purchaser. If it were admitted, that 20 years possession would make a title, yet no possession is here stated. And the court cannot presume it. The possession expressly here stated falls short of 20 years: It is only nineteen and an half.—But the court were all of opinion, that it appeared to be a possession of more than 20 years. He was himself in possession nineteen years and an half: And the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement. *Burr. Sett. Cas.* 631.

Living upon an estate out of which the person has a rent charge only, gains a settlement.

II. 14 G. 3. Steckley Pomroy and Cheriton Fitzpayne. The grandmother of *John Whitten* the pauper, being possessed of an estate in the parish of *Cheriton Fitzpayne* for a term of years determinable on the death of *Sarah Whitten* mother of the said pauper, devised to him 10*l.* a year out of her estate during his said mother's life. The testatrix died, leaving at her decease the said leasehold estate, and effects to the amount of about 32*l.* The pauper, being considerably in debt, in order to avoid his creditors, went to reside in the said parish of *Cheriton Fitzpayne*, and there resided with his mother on the said leasehold estate, and carried on the business of a jobber of cattle, during the continuance of the annuity, and while the same was due

and

and payable, for the space of 40 days and upwards. It was argued, that hereby the pauper gained a settlement: That it was a rent charge upon this leasehold estate; a specific charge, and gave a sufficient property to gain a settlement: He had a right to come upon it to distrain, and the removal of him from it would amount to a disseisin; and was in a much better condition than a person who has only credit enough to rent 10l. a year. But by *L. Mansfield*: There is no colour for adjudging the pauper to have gained a settlement in *Cheriton Fitzhayne*. He did not go thither to reside upon his own: He absconded there to avoid his creditors: This was no specific legacy, it is payable out of the whole personal estate. But if it were a specific legacy, a specific legatee has no right to go and live upon the estate. If it had been a rent charge out of a freehold, it would not give a right to live upon such freehold. But this man had only a pecuniary demand: There was no colour for his going to live upon this leasehold estate as his own. *Burr. Sett. Cas. 762.*

E. 14 G. 3. South Stoke and Painfwick. The widow of a man who died seised of a house and orchard in *South Stoke*, entred and resided therein for seven years, without any assignment of dower; and then married a second husband, who resided in this house with her about two years, and then died. It was argued, that she gained no settlement hereby, and consequently communicated none to her second husband. It is like the case of a next of kin, who cannot acquire a settlement before administration granted. A right of dower is no estate at all; nor is it like to an equitable estate; it is like a title to an action. By *L. Mansfield* and the court: The mere right of dower gained a settlement to herself, she having by *Magna Charta* a right to remain forty days in the house; and being irremovable for forty days, she thereby gained a settlement. But she could not communicate it to her second husband; as a tenant in dower has no right to enter till dower is assigned. *Burr. Sett. Cas. 783.*

Widow having a right of dower, although not set out, gains a settlement by residing upon the estate; but her second husband gains none.

T. 14 G. 3. Natland and Stainton. Two justices remove *Thomas Gibson* and *Hannah* his wife from *Natland* to *Stainton* in the county of *Westmorland*. The sessions upon appeal quashed the order, but directed the case to be drawn up for the opinion of the judge of assize, and agreed to be determined by his opinion. The case was, *Alan Court* by his will devised his estate at *Natland* to his wife during her widowhood; and after the determination thereof, to trustees to sell and divide the money equally among his children, of whom the said *Hannah* wife of the pauper was

Estate devised to a wife during her widowhood. Which being reversed from the judge of assize, and if determined by him, the court will not interfere.

one. The testator died. The widow entred; and let part of the estate to farm, reserving to herself a dwelling-house, which was worth about 20s. a year. The pauper *Gibson*, being reduced in his circumstances, came with his wife to live with her mother the widow in part of the said dwelling-house. The widow died in *June* 1769, the said pauper and his wife continuing in possession of that part of the dwelling-house aforesaid. In about a month after the death of the widow, the trustees contracted for the sale of the estate, and in *February* following a conveyance was executed, the children of the said devisor being no parties thereto. The pauper paid no rent to the widow, but from her death he paid rent to the purchaser until *May-day* following, when he quitted the premises. Upon this it was insisted, that as the pauper and his wife inhabited in *Natland* in part of the house devised as aforesaid, from her mother's death in *June* till the same was conveyed in *February* following, and she being entitled to a distributive share of the money to be raised by sale of the said devised premises, the pauper was not removeable during that time, and consequently gained a settlement in *Natland*. The opinion of the judge was given in writing in these words: "I have heard counsel on both sides, and am of opinion the settlement is in *Natland*. *H. Gould*." Afterwards, a rule was obtained in the court of king's bench, to shew cause, why the order of sessions aforesaid should not be quashed. But the counsel, instead of shewing cause, objected against the court's entering at all into the matter; for the judge having heard counsel, and given his opinion in writing, this ought to be final: otherwise no judge of assize will ever hereafter accept a reference of this kind. The court saw it in the same light. And *L. Mansfield* observed, that here was a manifest consent of the parties to this reference to the judge, and therefore it was like all other references by consent. He intimated that, as at present advised, he was of opinion with the judge. However, after this consent, he thought it very improper to take the matter up again. *Burr. Sett. Cas. 793.*

An estate conveyed to trustees to be sold.

E. 21 G. 3. Walcott and St. Michael's Bath. The pauper being legally settled in *St. Michael's*, and residing there, conveyed two houses, whereof he was seised in fee at *Walcott*, to trustees; in trust to sell and pay mortgages and other debts, and to pay the surplus money, if a. y. to the pauper. Some short time after, one of these houses becoming void, the trustees, having possession thereof, employed a woman to clean and air the house, and delivered to her the key for that purpose; which having done, she placed

placed the key among some things of her own, intending afterwards to re-deliver it to the trustees. But the pauper's wife took it from thence, and took possession of the vacant house, and she and her husband went and lived there about a year and three quarters. One of the trustees, seeing her conveying her goods thither, gave her notice that she was doing wrong, not having the consent of either the trustees or creditors. But the said house still remained unfold, and it was stated that the value of the premises was 650l. and the debts 880l. It was argued, that the beneficial interest in the estate remained in the pauper till sold; and for this was cited the case of *Natland*: And residing upon it as his own, he was not removable from it, and consequently gained a settlement. And it was likened to the case of a mortgage. —By *L. Mansfield* (unto which the rest of the court assented): If the estate on which a pauper resides is substantially his property, this is sufficient, whatever form of conveyance there may be; and therefore a mortgagor in possession gains a settlement, because the mortgagee, notwithstanding the form, has but a chattel; and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says, he shall have the surplus, *if any*. He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession, till the mortgagee brings an ejectment. After the mortgagee has got into possession, he (the mortgagee) might gain a settlement. There is still another, and a stronger ground, in this case; for the possession was gained by fraud. *Douglas*, 608. *Cdl. Cas.* 110.

H. 29 G. 3. K. v. Offchurch. *Henry West* and his wife were removed from *Thurlaston* to *Offchurch*, which was affirmed at the sessions, subject to the opinion of the court on a case reserved. *J. West*, the father of the pauper, was settled at *Offchurch*. In *January 1767*, his wife, who was mother of the pauper, died; and in *June 1767*, *J. West* married again with one *Jane Lockley*, with whom he lived in *Offchurch* until 1770, when they both went to *Southam*, where they resided 3 years without doing any act to gain a settlement there. In 1773 they removed to *Ladbroke* to a house there, held under the following title: (The case then stated that this house was vested by a settlement in trustees

An estate vested in trustees for the separate use of the wife.

to the separate use of the wife; with the usual clause that her receipt should be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, &c.) *West* and his wife lived in the house ever since 1773.—*L. Kenyon* said, the question had some novelty in it. Where a person resides on his own property, he gains a settlement by it; it having been considered as an excepted case out of the acts of parliament.—*L. Macclesfield* first held, that as a man cannot be dispossessed of his freehold, he is irremovable from it, and residing 40 days on an estate of his own, irremovable and gaining a settlement are synonymous terms. That indeed does not hold in all cases now, for by 9 G. c. 7. a purchaser of an estate for less than 30l. shall not acquire a settlement for any longer time than he resides upon it. Then here, if this had been the father's own estate the settlement would clearly have devolved on the son. But it is said that this is only the equitable estate of the wife. Now supposing it had been the wife's legal estate, the husband would have been seised *jure uxoris*, and by residing upon it would have gained a settlement. Then must it be a legal estate, in order to confer a settlement? Certainly not. That was not doubted in *South Sydenham* and *Lawerton*, or in any of the other cases. The question in that was, Whether the next of kin without administration had any estate whatever? and it was held that he had not. In *K. v. Cold Aston* a doubt was made, Whether a next of kin having the sole right of administration could not gain a settlement without taking out letters of administration. That shews that an equitable estate is sufficient to give a settlement. And indeed this position is confirmed by many other cases, and there are none in opposition to it. Then it is said that this is going still further, because this is only the equitable estate of the wife; and that even the wife herself had no right to reside upon it without the consent of the trustees. But she might beyond all doubt, if she had chosen, have elected to take the *estate* with her own hands, and that the trustees could not have prevented. The objection then against the husband's gaining a settlement here is too refined; for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this. The other judges assenting. Both orders quashed. *Durnf. and East*, 3 V. 114.

Mortgagee living
on the premises
mortgaged, but

T. 30 G. 3. *K. v. Catherington*. *William Booker* and his wife and family were removed from *Compton* to *Catherington*

ington. The sessions confirmed the order, subject to the opinion of the court, on a case, stating, That the pauper had a settlement in *Catherington* prior to *Michaelmas* 1789; and was entitled to the equity of redemption of a freehold estate in *Compton*, consisting of several dwelling houses of the annual value of 13l. 5s. which had been mortgaged by his father to *Eliz. Morey*, which mortgage was afterwards assigned to one *Ayles*. In *Michaelmas* term 1788, *Ayles* delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in *Compton*, and thereupon the tenants attorned to *Ayles*. About *Michaelmas* 1789, the pauper asked permission of Mr. *Nowland*, the agent for *Ayles*, to inhabit one of the houses part of the mortgaged estate, and which was then untenanted, for the purpose of overlooking some repairs, which he proposed to do upon the estate, with an intent to sell the same, and pay the mortgage money; in consequence of which he inhabited one of the houses upwards of 3 months, when he was removed by the present order. He did nothing towards the repair of the houses, or sale of the estate. No agreement was made between him and Mr. *Nowland* with respect to any rent to be paid for such house.—*L. Kenyon* Ch. J. It has been long established that an equitable title is sufficient to give a settlement; but in the case alluded to, the mortgagor was in possession. So, by the act for regulating votes of county elections, either the mortgagor or mortgagee in possession may vote. But in this case the party had neither *jus in re*, or *ad rem*.—*Buller* J. In the case of *K. v. St. Michael's Bath*, it was said, that either a mortgagor or mortgagee might gain a settlement according to circumstances; one of these circumstances is possession: And upon possession all the questions have turned. Both orders confirmed. *Durnf. and East*, 3 V. 771.

not in possession as owner, gains no settlement.

That a purchase under the value of 30l. shall not gain a settlement.

Purchase under 30l.

By the 9 G. c. 7. After March 25, 1723, No person shall be deemed to acquire any settlement in any parish or place, by virtue of any purchase of any estate or interest in such parish place, whereof the consideration for such purchase doth not amount to the sum of 30l. bona fide paid, for any longer or further time, than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place where he was last legally settled before the said purchase and inhabitancy therein.

No person] And as this shall not settle the person purchasing for longer time than he continues in the purchased estate;

Children residing with their father upon a

tenement purchased by him for less than 30l. gain no settlement by such residence.

estate, so it shall not settle any of his children, by any derivative settlement from him. As in the case of *Salford* and *Over-Norton*, H. 4 G. 3. *Peter White* the younger and *Mary* his wife were removed from *Salford* to *Over-Norton*, as likely to become chargeable to *Salford*, and as being last legally settled in *Over-Norton*. On appeal, the sessions discharge this order, and state specially, That *Peter White* the pauper's father, being settled in *Over-Norton*, in the year 1726, for the consideration of 29l., purchased a tenement in the parish of *Salford*. His son the pauper was born there in the year 1730, and lived with his father therein till about 1754, when he married and left his father's family, and lived in a separate tenement at *Salford*, without having gained any settlement, but what he derived from his father. On shewing cause, it was urged in support of the order of sessions, that here was a derivative settlement of the son at *Salford*, and he must be sent to that place which was the place of his father's settlement at the time of the son's removal. Before this statute, any purchase would have made a settlement; and this is a settlement to the father, whilst he inhabits on the estate; and the son's derivative settlement must be the same place, as his father was irremovable from it, at the time when the son was born. The father's settlement at *Over-Norton* may indeed possibly revive, if he quits his estate at *Salford*: But it doth not appear that he ever will quit it, and *Salford* is his present settlement. He cannot have two at once; nor can he be removed from his own against his will. And the son could have no settlement at *Over-Norton*; for the father never had any there since the son was born. On the other hand, it was argued, that the father's settlement is at *Over-Norton*, and is only suspended during his inhabitancy upon the purchase at *Salford*: And if the son leaves the father, and gains no settlement for himself, he must be sent to the place which was the father's settlement at the time when the son left him. The son is become emancipated from the father; and the father himself is liable to be removed, as soon as he leaves the very spot which he purchased. *L. Mansfield* delivered the resolution of the court: The question is, Whether the pauper ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over-Norton* as his last legal settlement? And we are of opinion, that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case, if the act had never been made: For he could not have been

been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in *Salford* was only temporary, and did not extinguish his settlement at *Over-Norton*. And the only settlement which the son could derive from his father was at *Over-Norton*; for there could be no derivative settlement from the father at *Salford*, the father himself having no settlement there, but being only irremovable from his own estate. And this may be illustrated by a supposition, that the son had not resided in *Salford*, but had gone to live in a third parish, and had there been likely to become chargeable; and the question had arisen, Whether he ought to be removed to *Salford* or *Over-Norton*? He could not possibly in such case have been removed to *Salford*, because such removal would have been conclusive upon *Salford*, and he would remain settled there for ever: Consequently, he must have been removed to *Over-Norton*. Which shews, that he can have acquired no settlement in *Salford*, by virtue of his father's purchase, even during the time of his father's residence upon it. *Burr. Settl. Cas.* 516. *Black. Rep.* 433.

By virtue of any purchase] T. 30 & 31 G. 2. *Uffculme* and *St. Sidwell's*. *John Hine*, the pauper, purchased a tenement in *St. Sidwell's* for 12l. He lived there with his family; and was rated to the land tax and to the poor rate, thus, "Occupier, late widow *Hooper's*, now *John Hine's* "tenement." He paid the rates. Afterwards, he sold the said tenement, and went, with his family, to the parish of *Uffculme*; from whence they were removed to the parish of *St. Sidwell*. The sessions, being of opinion that the said *John Hine* did not gain a settlement in *St. Sidwell's* by being rated and paying as aforesaid, the consideration of the said purchase being under 30l. did therefore vacate the said order. It was moved to quash the order of sessions. L. *Mansfield* Ch. J. delivered the resolution of the court: It will first be necessary to consider, how the law stood before the making of the statute of the 9 G. Now before that act, no man was removeable from his own; be the value of the purchase of it never so small and inconsiderable. And there were then other ways also of gaining settlements, as by serving a publick annual office, and being charged with and paying a share towards the publick taxes or levies and burdens of the parish. But this act was levelled only against fraudulent purchases of small value, made in order to gain settlements. And it declares, that purchases of less than 30l. value, *bona fide* paid, shall not

A tenement purchased for less than 30l. gains a settlement, if the person is rated and pay the taxes.

not gain a settlement for any longer time than the inhabitancy thereupon shall continue. After which, the purchaser shall be liable to be removed to his former legal settlement, prior to such purchase and inhabitancy upon it. And the established construction of this act hath been, pursuant to the intention of the legislature, to prevent fraudulent purchases. And therefore it hath been considered not to extend to what are called purchases in law, as devises or other such methods of coming to estates; because they are not fraudulent. Whereas the present settlement is claimed, by being rated and having paid towards the publick taxes of the parish; which is quite a different method of gaining a settlement. The man himself is here personally rated. The tax is laid upon a tenement, "late *Hooper's*, "now *John Hine's*." But if he had been only rated as occupier, without adding his name, yet surely that would imply notice of the man's being an inhabitant. And we are all clear, that this act only means to put a negative upon a person's gaining a settlement by making a small purchase, with a fraudulent intention to gain a settlement thereby, in the parish where such purchase is made; and that it doth not affect any other method of gaining a settlement. And indeed it is but reasonable, that persons who have been rated and have paid towards the publick taxes and levies of a parish should receive assistance from that parish, when they become necessitous themselves. *Burr. Sett. Cas.* 430.

Father surrendering a tenement under 30l. value to his son, he gains no settlement by residing thereon.

Purchase] *H. 3 G. 2 Sabridgeworth and Aldbury. Edward Shephard*, the pauper, was born at *Sabridgeworth*. And his father being seised in fee of a copyhold cottage in *Aldbury*, which used to be let at 25s. a year, did, about a year and a half before the removal, surrender the said copyhold cottage to his said son *Edward Shephard* and his heirs, who were thereupon admitted, and lived upon the same about a year and a half, and then sold the same for 14l. 2s. 6d., being the full value thereof. The two justices, and also the sessions, were of opinion, that this gained no settlement, being not such a purchase as the act intended for 30l. bona fide paid. It was moved to quash the orders of the justices; for that this estate in *Aldbury* was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father and a descent. But the court denied the motion, without so much as making a rule to shew cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was, to prevent persons gaining settle-

settlements who were any ways likely to be chargeable, and therefore provided that they should be able to lay out 30l. in a purchase. And both the orders were confirmed. 2 Sess. C. 161. 1 Barnardist. 297. Burr. Settl. Cas. 56.

But in the case of *Marwood and Kentisbury*, H. 29 G. 2. On a motion to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas Conibear* and *Mary* his wife from *Kentisbury* to *Marwood*: The case was; The said *Mary* had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden, and plat of ground at *Kentisbury*, for the residue of a term of 99 years then determinable on the death of one *Joan Slocombe*, the consideration of which purchase originally in the year 1689, amounted only to twenty shillings. *Mary* and her husband entred upon the premises, and continued thereon for several years, until the lease determined by the death of the said *Joan*. Upon which they were removed from *Kentisbury* to *Marwood*. It was urged, that the original consideration money not being 30l. nor any consideration paid on the subsequent conveyance to the daughter, it was such a purchase as the statute intended should not gain a settlement. Unto which it was answered, that the intention of the legislature was not to extend the law to every kind of purchase, according to the extensive legal sense of the word purchase; for the very words import, that it is to be a pecuniary purchase, or where an equivalent is paid for an estate, and not where a man comes to an estate by will, donation, settlement on marriage, or the like. But if the word purchase were to be taken in that extensive legal sense, yet there is a difference in the present case; and the true question will be, what estate the husband had: For if the husband did not take by purchase, it will be of no consequence how the wife took; because he will gain a settlement by the inhabitancy, and she cannot be separated from him. He is in by act of law, in the right of his wife; and not by any act, consent, or traffick of his own. By *Ryder* Ch. J. If I had any doubt, I would not give an opinion now. This is not a purchase within the meaning of the act. The word purchase is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was, to prevent settlements by purchases for small money considerations. In the present case, the husband is not to be considered as a purchaser, and therefore he

A conveyance from a father to his daughter in consideration of natural love and affection, without any pecuniary consideration being paid, is sufficient to gain her husband a settlement.

he acquired a settlement in *Kentisbury*. And by the court unanimously, the orders of the justices were quashed. *Burr. Settl. Cas.* 386.

And in the case of *Ingleton* and *Astwick*, *E. 6 G. 3. Richard Speddy* and *Rose* his wife, residing under a certificate at *Astwick*, the father of the said *Rose* conveyed to her, in consideration of natural love and affection, a customary cottage at *Astwick*, to the use of herself for life, and after her decease to the use of *Jane* her daughter and her heirs. The said *Richard* and *Rose* his wife entred upon and continued in possession of the cottage for 16 years, and then purchased of their daughter *Jane* her remainder in fee of the premises for 51., and afterwards sold the whole for 20 guineas. Afterwards, the said *Richard Speddy* and *Rose* his wife becoming actually chargeable, were removed by order of two justices to *Ingleton* which gave the certificate. And the sessions being of opinion that the said *Richard* and his wife gained no settlement in *Astwick*, confirmed that order. It was moved to quash these orders. And on shewing cause, they were given up by the counsel as indefensible, on the authority of the case of *Marwood*; this being a voluntary settlement, and not a purchase within the intent of the statute. *Burr. Settl. Cas.* 560.

A conveyance from father to son in consideration of natural love and affection, and of 10l. gains a settlement.

E. 29 G. 3. K. v. Uston. *John Henwood* and his family were removed from *Uston* to *Mortimer*. The sessions quashed the order, subject to the opinion of the court on the following case: That the pauper was originally settled at *Uston*, and came to reside with his father about 23 years ago on a cottage and premises at *Mortimer*, which, in *October 1766*, the father duly conveyed to him in fee, in consideration of natural love and affection, and of 10l. to him paid by the pauper. About 3 years after the pauper obtained a certificate from *Uston*, dated 1st *January 1770*, and afterwards occasionally received relief from *Uston* during his residence in the cottage at *Mortimer*; his father lived with him on the premises until his death about 8 years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises until 1788, when he sold the same for 50l. and returned to *Uston*.—By the court: This conveyance was in consideration of natural love and affection as well as 10l., and we cannot suppose that 10l. was the real value of the estate, for there are circumstances to shew the contrary, having been afterwards sold for 50l. This being a donation from a father to a son, is clearly not a purchase within 9 G. c. 7. notwithstanding part of the consideration was in money. And though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at *Mortimer*.

Mortimer. Order of sessions reversed. *Durnf. and East,* 3 V. 251.

And in the case of *Ilmington and Mickleton*, T. 6 G. 3. *Elizabeth Stanley* purchased a leasehold tenement in the parish of *Mickleton*, for the sum of 6l. for the remainder of a term of 1000 years. She resided upon the same about 9 years, and then was married to *Theophilus Evans*, who resided with her upon the said tenement about 16 years; then he died; and after his decease, she continued upon the premises for several years, and at last sold the same for the sum of 6l.; and after such sale was removed by order of two justices to *Ilmington*, the place of her husband's settlement before their intermarriage. And the sessions, upon appeal, confirmed that order. It was moved to quash these orders. On shewing cause, it was urged in support of the orders, that this was a purchase by the wife, clearly within the words of the statute, under the value of 30l. and the husband had no claim to it, but by virtue of that purchase. The term survived to the wife, on her husband's death. And if he had survived her, he could not have had it without taking out administration to his wife. On the contrary, it was answered, that this, though a new case, yet was within the reason of the former cases. In cases of descent, a settlement is gained, though the original purchase be under 30l. value: And there is as much reason why a settlement should be gained in the present case. This woman had an estate vested in her, when *Evans* married her; which, upon the marriage, vested in him. The husband gained a settlement in *Mickleton*, by 40 days residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the court. And both the orders were quashed. *Burr. Settl. Cas.* 566. *Black. Rep.* 598.

A purchase by a woman before marriage under 30l. will gain her husband a settlement by residing on the premises.

E. 26 G 3. *Havant and Warblington.* Two justices removed *John Bridger* and his wife and six children from *Havant* to *Warblington*. The sessions confirmed the order, and stated the following case: That *William Bridger*, father of the pauper, came to *Havant* with a certificate from *Warblington*: That *John Mody*, esq. lord of the manor of *Havant*, by copy of court-roll, granted to the said *William* and his heirs, one parcel of waste ground called the *Gravel Pit*; and which did not appear ever to have been granted before. *William* built a house thereon, and lived therein for several years as owner thereof; he afterwards borrowed 100l. of *Mary Roper*, and surrendered the premises for securing the same; and on the money not being paid, she was admitted. She afterwards sold

A grant of waste land by a lord of a manor under 30l. value will not gain a settlement.

sold her interest to *John Hammond*, who was thereupon admitted. After the death of *William Bridger*, his heir at law sold his equity of redemption to said *Hammond* for 20 l. 17 s. and surrendered the same accordingly. It appeared by the court books that *William Bridger* was admitted, on the lord's grant, to one parcel of land called the *Gravel-land*, and in the copy of his admission were these words, "fine one shilling, heriot one shilling, quit-rent one shilling." That *Moody's* steward proved that he was used to grant small parcels of the wastes of the said manor for small pecuniary considerations, but he never knew him make such grants without. That the value of the said parcel of land at the time of the said grant did not exceed 30 s. or 40 s. and *William Bridger* was at that time a very poor man. It did not appear whether any pecuniary consideration was given for the said grant, or it was voluntary and without any consideration. — The court seemed to reserve their opinion, whether supposing this to have been a voluntary grant, it would have discharged the certificate, so as that the pauper would have gained a settlement. But they were of opinion, that it was incumbent on the appellants to have satisfied the sessions that this was a voluntary grant; and they, not having done so, cannot now impeach the order; for as it does not appear upon the face of it to be wrong, the court must take it for granted that it is right. And they were of opinion, that there appeared sufficient in this case to shew that this was a purchase. Both orders affirmed. *Cas. by Durnf. & East, 1 V. 241.* [*L. Mansfield* was absent.]

A purchase for 30 l. part of which was paid by the parish officers.

The sum of 30 l. bona fide paid] *E. 13 G. St. Paul's Walden and Kempston.* There was a special order stated at sessions. A person purchased a copyhold tenement in *St. Paul's Walden*, which, with the fine and fees paid to the court, amounted to 30 l.; and it appeared by the same order, that the officers of the parish of *Kempston* had given him 40 s. towards paying his fine and fees. Therefore it was insisted, that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. But by the whole court: We cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed. *Foley, 238.*

Purchase for 39 l. but 30 l. thereof was borrowed on mortgage of the premises.

T. 8 & 9 G. 2. Tedford and Waddingham. Two justices remove *Francis Gill* from *Waddingham* to *Tedford*. Upon appeal, the sessions stated specially a case to be laid before the judge of assize; viz. That *Francis Gill* being settled at *Tedford*, contracted with *John Atkinson* for a house and curtilage in *Waddingham* for 39 l. which was conveyed to *Gill*

Gill and his heirs accordingly. *Gill* paid 9*l.* and *Isaac Bristol* paid the remaining 30*l.* to *Atkinson* by *Gill's* order. About a month after the execution of the conveyance, *Gill* mortgaged the premises to the said *Isaac Bristol*. *Gill* continued in possession about four years after the mortgage. Then *Bristol* entered, by virtue of the said mortgage and release of the equity of redemption. Then the inhabitants of *Waddingham* procured *Gill*, being out of possession, to be removed to *Tedford*. The order of sessions recites, that whereas the judges of assize had not time to hear and determine it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth declare and adjudge, that the purchase made by *Gill* was fraudulent, and that the settlement of *Francis Gill* is at *Tedford*; but that the parishioners of *Tedford* are no ways concerned in the said fraud.—It was moved to quash these orders; and urged, that the justices in their adjudication depart from their premises. For the act doth not extend to any case where the consideration exceeds 30*l.* But here the consideration is above 30*l.* And it appears to have been *bona fide* paid by *Gill*; part by himself, and part by his order (though by the hands of *Bristol*). It doth not even appear that *Bristol* had lent it to him; therefore it shall be taken that it was *Gill's* own money. And no circumstances of fraud are stated: And therefore if this conclusion of the justices at sessions be drawn from the premises stated, it is a conclusion contrary both to the law and to the fact; and the court will themselves judge of it and set it right.—On the other side it was argued, whether the sum paid as consideration money was greater or less; if there be fraud, it poisons the whole. The justices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchase. And it appears upon the face of the case, as stated for the judge of assize, that it was so. But that is not all: They are not confined to this state of the facts. For they heard further evidence on both sides, before they adjudged the purchase to be fraudulent.—By *L. Hardwicke* Ch. J. It must be further evidence of the same fact: For the state of the case made for the judge of assize was before agreed between the parties to be the true state of it. This case doth not appear to be within the act; for the act is confined to purchases under 30*l.* Now in the present case, the consideration was 39*l.* and was *bona fide* paid to the vendor. And it would be pretty hard to say, that the justices had a power upon this act to enquire, whether or no the purchaser bor-

rowed the money. It is a common case to borrow money to make up the price. And as to the fraud, it is true, that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding: But when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. And the whole court was of opinion, that from the facts stated, here is no sufficient evidence of fraud. And both the orders were quashed. *Burr. Settl. Cas. 57.*

Mortgage entering as principal creditor above 30l.

H. 15 G. 2. Colleigh and Stockland. John Spiller, the pauper, was a mortgagee of a term for 15 l.; and 30 s. were due to him for interest, and 18 l. 10 s. more on bond and simple contract. The mortgagor died. *Spiller* took out administration, as principal creditor; entered and was possessed; and so continued, till removed by the original order. By the court: *Spiller* gained a settlement, as a purchaser for a consideration of more than 30 l. *bona fide* paid. *Str. 1162. Burr. Settl. Cas. 169.*

A cottage devised to the pauper to live in during his life, gains a settlement.

E. 14 G. 3. Eversholt and Woburn. The paupers (two sisters) resided at *Eversholt* under a certificate from *Woburn*. A person intitled to a long term of years in a cottage in *Eversholt*, after having devised it to *Andrew Powell*, son of their father *William Powell*, adds, that "it is also my will" and pleasure, that the said *William Powell* (their father) "and his wife and children shall have free liberty and power during their natural life to dwell in it." And accordingly, *William Powell* and his wife, and their said son *Andrew*, and the two daughters (the paupers) resided in it till *William Powell's* death. By the court clearly: The settlement of the daughters (the two paupers) is in *Eversholt*. *Burr. Settl. Cas. 851.*

Laying out money afterwards upon a purchase under 30 l. will not gain a settlement.

H. 6 G. 3. Dunchurch and South Kilworth. Edward Tanjur, a certificate man from *Dunchurch*, together with his wife *Elizabeth*, were joint purchasers of a house, yard, and garden at *South Kilworth*, and paid for the purchase thereof 19 l. and upwards. He laid out about 15 l. more in repairs, and built a new shop on part of the premises; and was taxed after the rate of a tenement of 30 l. value, and resided in the same till his death. After his death, his widow the pauper *Elizabeth* continued in possession for 10 months and more; afterwards sold part of the premises for upwards of 30 l. and reserved part to herself; but removing out of the same into another house in the same parish, and becoming

becoming actually chargeable, she was removed by order of two justices to *Dunchurch* which gave the certificate, and the sessions confirmed that order. It was moved to quash these orders; for that the pauper on this state of the case had gained a settlement at *South Kilworth*. By the court: The whole question is, Whether this woman was a *bona fide* purchaser of an estate of 30 l. value? She cannot be presumed to have come to it by descent, or executorship, or any such like act of law, because the contrary appears. She and her husband were joint purchasers. They took jointly and by entirety, and not by moieties. If so, she can only stand in the same situation as her husband did; which is that of a purchaser. And as to the value, the act takes it according to the purchase money actually paid; and no money afterwards laid out, can make the prior purchase of a greater value than it really was at the time of making it. Therefore she gained no settlement by this purchase. And the orders were confirmed. *Burr. Sett. Cas.* 553. *Black. Rep.* 596.

T. 27 G. 3. Mattingley and Heckfield. IV. Wheatley and his wife and son were removed from *Mattingley* to *Heckfield*. The sessions quashed the order, subject to the opinion of the court on the following case.—On 18th *June* 1769, the pauper came to *Mattingley* with a certificate of that date from *Heckfield*, and continued to live at *Mattingley* until the time of the removal: Whilst the pauper continued so to reside, and previous to the 3d of *August* 1780, he contracted with *John Ironmonger* for the purchase of a copyhold tenement at *Mattingley*, which had been, previous to such contract, mortgaged to one *T. Bailey* for 32 l. which money was unpaid at the time of making the contract; which contract was, that the pauper should pay 39 l. 17 s. 6 d. for the said tenement, which sum was inclusive of the 32 l. due on the said mortgage, and the pauper paid to *Ironmonger* 7 l. 17 s. 6 d. which, with 32 l. to be paid to *Bailey*, made the aforesaid sum of 39 l. 17 s. 6 d. On the 3d *August* 1780, the pauper was admitted to the said premises on the surrender of *Ironmonger*, subject to a mortgage surrender for the 32 l. to *Bailey*, and the pauper afterwards entered into possession of the premises, and continued possessed thereof for four years, during which he paid to the said *Bailey* two years interest, which was all the interest *Bailey* received after the purchase. He never paid off the said mortgage money; and in the year 1784 he delivered up the possession of the said premises to the said *Bailey*.—*Miles* argued, that the value of the estate purchased by the pauper was more than sufficient to satisfy the

Purchase for 39 l. 17 s. 6 d. the premises being then mortgaged for 32 l. which was never paid, is a purchase only for 7 l. 17 s. 6 d. *bona fide* pa. do.

words of the statute 9 G. 1. c. 7. for it is stated, that the pauper contracted for the purchase of the estate for 39l. The value then being sufficient, and the money *bona fide* paid to the vendor, it is sufficient if he be satisfied, whether by payment at the time by a debt liquidated, or by any other mode; the manner in which the money is paid, is perfectly immaterial. And he cited the above cases of *K. v. Stockland*, *K. v. Tedford*, and *K. v. Dunchurch*.—*Burrough contra* was stopped by the court, who said the only question was, Whether the purchase made by the pauper was in fact of the value of 30 l. *bona fide* paid? It is not even pretended that the sum of 30 l. has been paid at all, but on the contrary no more than 7 l. 17 s. 6 d. for the pauper only purchased the interest of the mortgagor subject to the mortgage. Now the estate was mortgaged for 32 l. therefore the mortgagor's interest subject to that was only 7 l. 17 s. 6 d. which was the whole of the pauper's purchase. The estate having been mortgaged for 32 l. the instant the mortgagee got into possession, he might have gained a settlement upon it; if so, the mortgagee was a purchaser for 32 l. and the pauper only purchased subject to that charge; had the purchase money been *bona fide* paid, the court would not have enquired how the purchaser came by the money, nor whether he mortgaged the estate for the payment of it; that might be a question of fraud for the consideration of the sessions; but in order to constitute a purchase within 9 G. 1. the sum of 30 l. must not only be paid in point of fact, but must be also *bona fide* paid.—Order of sessions quashed. *Caf. by Durnf. and East, 2 V. 12.*

Where the purchase money mentioned in the deeds was 28 l. but the sum *bona fide* paid was 30 l.

M. 30 G. 3. K. v. Scammonden. C. Bottomley and his wife were removed from *Scammonden* to *Soyland* both in the West Riding of *Yorkshire*. The sessions discharged the order, subject to the opinion of the court on the following case. The pauper being legally settled in *Soyland*, made an agreement with one *Harrison* for the purchase of an estate in *Rishworth* for 28 l. and the consideration mentioned in the deeds, and in the receipt indorsed, was 28 l. but the appellants produced parol evidence to prove, that, before the deeds were executed, the vendor declared that as the agreement was not in writing he was not bound by it, and having since had 30 l. offered for the estate, he would not take less, nor would he execute the deeds unless the purchase money were made up that sum. Upon which the pauper advanced 1 l. 15 s. more, which with 5 s. owing from *Harrison* to the pauper, was insisted made up the sum of 30 l. but the deeds were not altered, and the consideration therein mentioned was left according to the original agreement

ment, viz. 28 l. The counsel for the appellants contended that this was a *bona fide* purchase for 30 l. But the court were of opinion that no parol evidence could be given to contradict the consideration mentioned in the deeds. The estate purchased was the estate of *Harrison's* wife; and in the deed there was a covenant from *Harrison* that he and his wife would levy a fine unto *C. Bottomley* in fee, of the premises, at the cost of *Bottomley*; towards the expence of which fine *C. Bottomley* left in the hands of his attorney 4 guineas. The pauper resided above three months upon the premises, and afterwards sold them to his brother, *J. Bottomley*. To this conveyance *Harrison* and his wife were parties; and it recited *Harrison's* covenant in the former deed to levy a fine; but as such a fine had not then been levied, it was agreed that instead thereof, *Harrison* and his wife should acknowledge and levy a fine of the premises unto *Bottomley* in fee, which was in *H.* term 1787 levied accordingly; part of the expence thereof was discharged by the 4 guineas, so left in the hands of the attorney by the pauper, and the other part was paid by *Bottomley*. And the sessions being of opinion that the 4 guineas was to be considered as part of the consideration under the act of parliament, and that *C. Bottomley* by such purchase gained a settlement in *Risbworth*, discharged the order. — *L. Kenyon* Ch. J. said, it was clear that the party might prove other considerations than those expressed in the deed. It is permitted in all cases of covenants to stand seized to uses. And in *Filmer v. Gott*, where the considerations mentioned in the deed were 10,000 l. and *natural love and affection*, the Lords Commissioners of the Great Seal directed an issue to try, whether natural love and affection formed any part of the consideration, the estates being worth near 30,000 l. On an appeal to the House of Lords this was confirmed; and the jury on the trial of the issue finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the Lord Chancellor. *Ashburst J.* concurred. (*Buller* and *Grose J.* absent.) Order of sessions affirmed. *Durnf. and East*, 3 V. 474.

That a person may not be removed from his own, although not settled thereby.

Person not removable from his own.

M. 30 G. 2. *Aythrop Rooding* and *White Rooding*. *William Gates*, husband of the pauper *Susannah Gates*, being settled at *White Rooding*, went away and left his wife and children. Whereupon she and her children went and lived for the space of 40 days, without her husband, in a copyhold tenement of her husband's at *Aythrop Rooding*. Two justices remove her to *White Rooding*, as the place of her husband's

husband's settlement. The sessions, upon appeal, quash that order. It was moved to quash the order of sessions; and argued, that though this was the husband's own estate, yet his wife and children might be removed from it; that he himself could not have gained a settlement upon the said estate without residence upon it, for otherwise a man who had property in divers parishes might have different settlements at the same time. On the other hand; it was admitted, that neither the wife and children, nor even the husband himself, could have been removed to this place, where the husband had never resided; but it was insisted, that they were irremovable from it, as they were inhabiting upon their own estate. For they did not come to inhabit there as intruders or vagrants, but to reside upon their own; and no persons can be removed from their own, be the value ever so small, or let them come to it in what manner soever. By the court: There doth not appear any dissent of her husband from her going there, and therefore it is rather to be presumed that she went with his consent. The husband's settlement remains as it was, but nevertheless the wife was not removeable from his estate. It is one thing to say, that a person may not be removed; and another, that such person doth not gain a settlement. The husband himself would not have been removeable from his own if he had gone thither. A man's right to reside upon his own estate is founded on *Magna charta*, which says that a man shall not be disseised of his freehold. A wife hath a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, it would have made an alteration. And the court were unanimous, that the justices could not remove her from her husband's property. *Burr. Settl. Cas.* 412.

E. 4 G. 3. Leeds and Blackfordby. *Joseph Howe*, husband of *Anne Howe* the pauper, took a tenement of 10 l. a year at *Blackfordby*, and resided there above 40 days. Afterwards he took a tenement at *Leeds* of above 10 l. a year, and went and resided there for above 40 days, leaving his wife at *Blackfordby*. Then he returned to *Blackfordby*, and stayed with his wife there 27 days. And on his leaving her, and going away to *Leeds*, two justices remove her from *Blackfordby* to *Leeds*, as to her place of settlement. It was agreed, that her settlement must follow that of her husband: But the court were of opinion, that the justices had no power to remove her from *Blackfordby*, whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at *Blackfordby*, the lease whereof was unexpired.

And

And if they could not have removed the man himself from his own, it follows that they could not remove his wife so long as it remained his. *Burr. Settl. Cas.* 524. *Black. Rep.* 466.

How far a certificate person shall gain a settlement by an estate of his own, notwithstanding the above-said statute of the 9 & 10 W.

Whether a certificate person may gain a settlement by residing on his own estate.

E. 5 G. Burckear and Eastwoodhay. Abraham Huetet comes with a certificate into the parish of *Eastwoodhay*, and afterwards marries one *Sarah Smith*. Her father surrenders to her a copyhold estate of 20 s. a year, and so the husband had it in her right. By the court: The man has gained a settlement in *Eastwoodhay*; for a man cannot be turned out of his own, be it never so small. And by *Fortescue J.* The party here could not be removed: And not removeable, and gaining a settlement, are the same thing. Then it was objected, that the person being a certificate person, he gains no settlement, unless he rents a tenement of 10 l. a year, or exerciseth an annual office; and that statute being an explanatory act, is not itself to be explained, and consequently cannot be taken farther than the words. But by the court: This is not an explanatory act, but a new law, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either that are there mentioned; and the parliament never intended to put a certificate man in a worse condition than another person. *Cas. of S.* 121. *Str.* 163. *Burr. Settl. Cas.* 221.

[Note, Where it is said all along throughout this course of settlements, that a person not removeable for 40 days thereby gains a settlement; this is to be understood with respect to the particular instance only then spoken of: For it is by no means universally true, that every person who resides 40 days unremoveable doth become thereby legally settled. A *servant* not removeable for 40 days, gains no settlement unless he serves out his year: A *bastard*, with its mother for nurture for 40 days, doth not thereby acquire any new settlement: So a *wife* residing upon the husband's estate: So a *certificate person*, or one residing on a *purchase under the value of 30 l.* and not actually chargeable, though they are irremoveable, yet by such residence they acquire no settlement.]

H. 6 G. Ivinghoe and Stonebridge. A certificate man made a purchase in *Stonebridge*, and his *apprentice* lived with him for above 40 days upon the purchased estate

there:

there : And by the court, The apprentice thereby gained a settlement ; for when a certificate man maketh a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a settled inhabitant, and consequently his apprentice with him. *Str.* 266.

E. 16 G. 2. Stansfield and Spotland. If an estate descends to a certificate person, it gains him a settlement, because it is by operation of law, and not by an act of his own ; and as the statute hath been laid open in cases of descents, it ought to be so in cases of purchases. And by *Lee Ch. J.* the statute of the 8 & 9 *W.* hath received a liberal construction ; and hath been held to gain a settlement, both in descents and devises, and purchases. On the 13 & 14 *C. 2.* the construction has been, that let the value be what it will, a person cannot be removed from his own ; and it seems to be the same upon the certificate act ; for if he is not removeable within the 13 & 14 *C. 2.* he is not removeable on the certificate act. 1 *Sess. C.* 316. *Burr. Settl. Cas.* 205.

T. 16 G. 2. Deddington and Duns Tew. A certificate man purchased a house for 42l. lived in it many years, then sold it, and becoming chargeable was sent back. It was insisted, that the 9 & 10 *W. c.* 11. saying, a certificate man shall gain a settlement by no act whatsoever, unless the taking 10 l. a year, or serving an annual office, this man, notwithstanding the purchase, might be sent back : and it was said to differ from the case of *Burckear* and *Eastwoodhay*, where the surrender of a copyhold to the certificate man's wife was held to gain him a settlement ; because there it was not his own act (as this purchase is) but it came to him by operation of the law. But the court did not think this a sufficient distinction, and said a purchase was in its nature an excepted case : and his selling it afterwards made no alteration. *Str.* 1193. *Burr. Settl. Cas.* 220.

H. 31 G. 2. Cold Ashton and Woodchester. Case stated for the opinion of the court : In July 1725, *Daniel Harrison* and *Mary* his wife, and *William* their son, went with a certificate from *Woodchester* to *Cold Ashton*. They all lived in the parish of *Cold Ashton* from July 1725, till about *Christmas* 1728, at which time *William* Fias the father of the said *Mary* died intestate, leaving the said *Mary* his daughter and five other children, and being at the time of his death possessed of and intitled to a tenement and two acres and an half of land of the yearly value of 6l. 17 s. in *Cold Ashton*, for the remainder of a term

term of 82 years, determinable on the death of himself and the said *Mary* his daughter. Upon the death of *William Fido*, *Daniel Harrifon* and *Mary* his wife, and *William* their son, who was then about five years old, entred upon and took possession of the said tenement and land, and *Daniel Harrifon* and *Mary* his wife have lived in and occupied the same ever since, till the removal by the order now appealed against. But no administration of the goods or personal effects of *William Fido* was ever granted to the said *Daniel Harrifon* and *Mary* his wife, or either of them, or to any other person. *William Harrifon* lived with his parents *Daniel* and *Mary Harrifon* in the said tenement till about 1748, when he married the pauper *Mary* (by whom he had the four children removed); and after his marriage, he and his wife *Mary* lived in the parish of *Cold Ashton* separate and apart from the said *Daniel Harrifon*, until the time of the death of the said *William*, which was in the year 1755. *Mary* the widow of *William Harrifon*, and her four children, having after the death of the said *William* become actually chargeable to the parish of *Cold Ashton*, were removed by order of two justices to *Woodchester* which had granted the certificate. Upon appeal, the sessions quashed the order, and stated the above case; which being removed by *certiorari*, it was moved that the order of sessions might be quashed. There were two questions; 1. Whether *Daniel Harrifon* the father acquired any settlement different from that to which he was intitled by the certificate? 2. Whether if so, the son gained a derivative one? — *L. Mansfield Ch. J.* As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction; for it is not within the words of the 8 & 9 *W.* which speaks only of serving an annual office, and renting 10 l. a year. But residing on a man's own estate was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 *C.* 2. not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to the principle on which the construction is founded; and therefore a man who resides on his own estate, though of ever so small a value, is irremovable: And this holds equally in the case of a certificate person, who gains a settlement if after he comes in by certificate he is under such circumstances as by his property he

he cannot be removed. Whether in this case *Daniel Harrison* had such a property in this leasehold estate when he first entered upon it, it is a question that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removeable from. For the statute of limitations doth not operate by way of barring the remedy only, but it gives a right. He may bring an ejectment after 20 years possession; and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for there, the possession of the tenant is that of the landlord. This possession gives a title from which the parish officers could not remove him, nor the next of kin. In the case cited, *Furvinton and Widworthy*, they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned on the general question, Whether the next of kin gains a settlement without administration? I should have desired time to consider of it, and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others, as in this case; for where one is the sole next of kin, he has the undoubted right to administration. In general, it is of more consequence, that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son;—the word *emancipation* is a loose term in our law, especially in the matter of settlements, and is used in the books without affixing any precise idea. Indeed it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are intitled to the settlement of their father, till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to say that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived 20 years with his father in this tenement, or at least very near it, and we cannot intend that he did not.—Mr. J. *Denison* was of the same opinion, (Mr. J. *Foster* absent.)—Mr. J. *Wilmot*: As to the father; I do not think it material to say any thing about the administration. Had the case turned upon that, it

would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule (*Stare decisis*), which is a right rule, and more especially in the poor law.—Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title, without administration: After such a length of possession one would be inclined to presume as much as possible. Now here it is possible that *Daniel Harrison* and his wife might have some grant or assignment from *William Fido* in his lifetime; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might possibly have been a rightful one.—It would be too nice to be computing days, to see whether the son was with his father a day over or under 20 years.—And the order of sessions was affirmed. *Burr. Settl. Cas.* 444.

M. 32 G. 2. *Shenston and Aldridge*. The wife of *Isaac Green*, a certificate man, had an estate devised to her for life by her father; upon which she and her husband entred, and lived thereupon for above six months. By the court; *Isaac* hereby gained a settlement, notwithstanding the certificate. *Burr. Settl. Cas.* 468.

T. 21 G. 3. *Hadenham and Wivelingham*. *Robert Bittany*, late husband of the pauper *Mary Bittany*, came with a certificate from *Hadenham* to *Wivelingham*, where one *Elizabeth Bittany* by her will devised her estate at *Wivelingham* to trustees to be sold, and the money arising from the sale thereof to be divided between the said *Robert Bittany* and three daughters of *William Bittany*. They all agreed among themselves, that *Robert* should have the real estate, and the three daughters of *William* the personalty amongst them, whereupon the trustees conveyed the said real estate to *Robert*; who entred, and resided thereupon several years. The question was, whether this residence of *Robert* was such a residence upon his own property as would discharge the certificate, and gain a settlement. It was admitted, that residence on an estate in which a man has only an equitable interest is sufficient; but it was insisted, that *Robert* had taken no interest of any kind in the lands by the will, neither legal nor equitable. He had only a right to call upon the trustees to sell the estate, and distribute the money arising from the sale. On the other hand it was argued, that *Robert* had clearly an equitable title under the will; all the parties had agreed that the trustees should not sell; and that it is clearly settled, that a residence on one's own estate, coming either by descent or devise, whether the legal interest is coupled with the equitable or not,

not, and whatever the value is, will gain a settlement, and discharge a certificate. *L. Mansfield* mentioned the case of *Roper and Radclyffe*, to shew, that a devisee of the surplus arising from the sale of lands after payment of debts and legacies, has an equitable interest in the lands themselves, it being in his option to pay the debts and legacies, and keep the land. *Willes J.* said, the same question as in this case had occurred in the case of *Natland (a)*, which was referred to *Mr. J. Gould* on the circuit, who decided that a settlement was gained; and that his opinion had been afterwards recognized by the court. And in the present case, the court were unanimous, that *Robert* hereby vacated the certificate, and consequently gained a settlement. *Douglas, 738. Cal. Cas. 121.*

Residence necessary.

How far residence upon a man's own estate is necessary to gain him a settlement.

H. 8 W. Rifelip and Harrow. By *Holt Ch. J.* Having land in a parish will not make a settlement, but living in a parish where one has land, will gain a settlement without notice; for the act never meant to banish men from the enjoyment of their own lands. *2 Salk. 524.*

M. 8 G. Wokey and Hinton Blewet. A person settled at *Hinton Blewet* had an estate descended to him in *Wokey*; whereupon the justices send him thither as to the place of his last settlement. But by the court: The order must be quashed; for it is no settlement nor inhabitation, though if he should go thither he could not be removed: it may be a great injury to send him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term. *Str. 476.*

E. 8 G. 2. K. and St. Mary Berkhamstead. The husband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in *Northchurch*, and she and her children went to live there. The question was, Whether by continuing therein 40 days, they gained a settlement? The court seemed to be of opinion, since it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for herself, but must follow the husband's settlement; and that the husband having not resided 40 days at *Northchurch*, in the said house unremoveable, he hath gained no settlement there. *2 Sess. C. 182.*

M. 25 G. 2. West Shefford and Baydon. *John Bird* came into *West Shefford* with a certificate from *Baydon*.

(a) *Ante*, this title.

During his stay at *West Shefford*, he became beneficially intitled to a leasehold estate of 14 l. a year there, determinable upon his own life. Upon which he entred on Nov. 17th, and continued in possession till the 15th of December following, being 28 days only, when he died. By the court: In all cases, whether of ownership of land, or renting 10 l. a year, a residence of 40 days is necessary. And the case of *Mursley and Grandborough* was cited as a case in point; in which it was holden by the court, that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by descent, marriage, executorship, or administration) may dwell upon it as his own, and he is not removeable; and gains a settlement if he continue 40 days, though under 10 l. a year. But he must abide 40 days. And neither he nor his can be removed to it from any other place, unless he shall have resided 40 days. *Burr. Settl. Cas.* 307.

But residence upon the *same estate* is not necessary, provided the residence be within the parish. As in the case of *Sowton and Sydbury*, E. 12 G. 2. A person who lived with his family at *Sowton*, having an estate at *Sydbury*, which the tenant gave up, went thither and lodged in an alehouse as a guest, without having any certain room there, and staid from November till April, but sometimes went to *Sowton*, where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, Whether such inhabiting, and not upon the estate, would gain a settlement? And the court were of opinion it would, and that it made no difference whether it were in his own house or in an alehouse; for being in the same parish he could not be removed. 2 *Seff. C.* 150. 19 *Viner*, 374. *Burr. Settl. Cas.* 125.

But residence upon the same estate is not necessary, provided it be in the parish.

Also it is not necessary that such residence should be for 40 days together. Thus in the same case of *Sowton and Sydbury*, the question was moved, Whether, since he did not reside there for 40 days together, but for more than 40 days in the whole, such residence should gain a settlement? And by the whole court: It is not necessary upon the statute, that the residence should be 40 days successively. 2 *Seff. C.* 150. *Andr.* 345. 19 *Vin.* 374. *Burr. Settl. Cas.* 125.

Residence need not be for 40 days together.

And, T. 13 G. 2. *St. Nyott's and St. Cleere*. *Nicholas Penquite* the pauper was born at *St. Cleere*; afterwards he gained a settlement at *St. Nyott's*; and from thence returned

turned to *St. Cleere*, and lived there with his mother, on a tenement, in part of which he had an estate of freehold and inheritance, and of which he was seised in common together with his mother and sisters. He worked there as a day labourer, and lodged sometimes on his own estate and sometimes in other places where he worked in the said parish of *St. Cleere*, and at other times in other parishes adjoining ; but did not live and reside on his said estate in *St. Cleere*, or in the parish of *St. Cleere*, by the space of 40 days together at any one time, between his leaving *St. Nyott's* and selling his estate in *St. Cleere* (which was about three years after his returning to *St. Cleere*). By the court : This depends on the statute of the 13 & 14 C. 2. which directs the sending a pauper to the place where he was last legally settled for the space of 40 days. But this man continued, off and on, for more than 40 days. And it is not necessary that he should have resided there 40 days together. He was irremovable from *St. Cleere* for above 40 days ; and that is sufficient. *Burr. Sett. Cas.* 132.

Conclusion.

AND now upon the whole, having gone through this subject of settlements, and I hope with some perspicuity and exactness ; the first reflection which will arise in the mind of every reader, I think, will be, to admire the subtilty of human wit. It was the observation of a wise king of *Israel* long ago, that God made man upright, but they have sought out many inventions. A stranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament, and one single clause of that one short act, and which upon the face of it doth not appear to carry any considerable difficulty.

The next thing that occurs, is to reverence the wisdom of the court of king's bench, in clearing up those difficulties, and establishing the sense of the law upon solid and firm grounds ; whose determinations, although they are not a law in themselves, yet they are the best and surest exposition of the law ; being made by persons of distinguished abilities, educated and exercised in the profession of the law, after argument by able counsel. Which advantages are not ordinarily to be expected at a quarter sessions. So that the law seems now to be well settled as to these matters ; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law : And this, from the nature of the thing, must always be uncertain, as depend-

depending upon the testimony of witnesses, and those also for the most part of the meanest of the people.

There hath been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect in those orders themselves; or from some error in the method of proceeding in relation thereto: Which comes next to be considered.

III. Of removals.

- i. *Order of removal in general.*
- ii. *Order of removal of a certificate person.*
- iii. *Appeal against the order of removal.*

i. *Order of removal in general.*

The statute of the 13 & 14 C. 2. c. 12. which hath been so often canvassed in treating concerning settlements, is not yet to be dismissed by us, but will appear again under this head, in a new and quite different light; as being that upon which all the orders of removal are or ought to be established. And in this view, there have been as many cases adjudged upon it, as in the other, although not altogether in so great a variety.

In treating of this subject, we will first set forth the statutes: Then the established form of an order of removal thereupon: And then take the same in pieces orderly and distinctly, thereby to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, the statute of the 5 G. 2. whereby errors in point of form may be amended at the sessions, hath in some sort remedied these defects; but that it may appear how such errors are to be amended, and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be deemed matter of form, and what shall be deemed of the substance of the order, this method is not the less to be pursued upon that account.

By the 13 & 14 C. 2. c. 12. it is enacted as follows: *Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy, and when they have*

have consumed it, then to another parish, and at last become regues and vagabonds; it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within 40 days after any such person coming so to settle in any tenement under yearly value of 10 L. for any two justices of the peace (one whereof is of the quorum) of the division where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by the said justices. s. 1.

And if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, one justice may send him to the house of correction, there to be punished as a vagabond. s. 3. And by the 17 G. 2. c. 5. All persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of two justices, without bringing a certificate from the parish or place whereunto they belong, shall be deemed idle and disorderly persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their own confession, or by the oath of one credible witness) to the house of correction, there to be kept to hard labour for any time not exceeding one month. s. 1.

And if the churchwardens and overseers of the parish to which he shall be removed, refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of that division shall bind any such officer in whom there shall be default to the assizes or sessions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. s. 3.

And by the 3 IV. c. 11. If any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty, to another, by warrant of two justices; the churchwardens or overseers of the poor of the parish or town to which the said person shall be so removed, are required to receive the said person: And if he or they shall refuse so to do, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5 l. to the use of the poor of the parish or town from which such person was removed, to be levied by distress, by warrant to the constable of the parish or town where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. s. 10.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace] By these words one justice alone hath cognizance of the matter, so far as concerneth the complaint only; and by virtue thereof may issue his warrant to bring the party before him in order to his examination; or he may issue his warrant, to bring the party before himself and another justice, in order to hearing and determining the complaint; for he himself alone cannot hear and determine, but only bring the matter into the course of being heard and determined by two justices: And therefore it is most usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. Nevertheless, if the party is willing, he may go voluntarily before the justices, at the request of the overseers, without any warrant at all.

One justice may cause a pauper to be brought to be examined, to his settlement

The form of which warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant of one justice for a person to be examined concerning his settlement.

Westmorland. { To the constable of _____

FORASMUCH as complaint hath been made before me _____ one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of _____ in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said A. P. is likely to become chargeable to the said parish of _____. These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement. Herein fail you not. Given under my hand and seal the _____ day of _____

Warrant of two justices in order to the adjudication.

Westmorland. { To _____

FORASMUCH as complaint hath been made before us _____ two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, by the churchwardens and overseers of the poor of the parish of _____

Poor. (Removal.)

in the said county, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that he the said A. P. is likely to become chargeable to the said parish of ——. These are therefore to require you to bring the said A. P. before us, at the house of — in — in the said county, on — the — day of — at the hour of — in the afternoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the — day of —

It may also not be unfitting, especially in cases of doubt or difficulty, to give notice (if it may be) to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from such adjudications and orders. Which notice may be to the effect following :

Summons to shew cause against an order for removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of — in the county of —, and to every of them.

This is to summon you, or some of you, to appear (if you shall so think proper) before —, and such other his majesty's justices of the peace for the said county of W. as shall be at the house of — in — in the said county of W. on — the — day of — at the hour of — in the afternoon of the same day, to shew cause why A. P. should not be removed from the parish of — in the said county of W. to your said parish of —. Given under — hand and seal, this — day of — in the year of our Lord —.

And then the general form of an order of removal, as grounded upon the statute of the 13 & 14 C. 2. above recited, may be thus :

The form of a general order of removal.

Westmorland. **T**O the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers

seers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, and Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, nor produced any certificate owning them or any of them to be settled elsewhere, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are likely to be chargeable to the said parish of Orton: We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland: We do therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of the said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the — day of — in the — year of the reign of his said majesty king George the third.

To the churchwardens and overseers of the poor of the parish of Orton] If a place is extraparochial, and hath no overseers, the justices cannot remove from thence, because there are none neither to complain nor to convey; but the justices ought first to appoint overseers, and then to remove. 2 Salk. 487. Foley, 97, 98.

Removals from and to extraparochial places.

And as the justices cannot send from an extraparochial place, unless they have overseers, so neither can they send to an extraparochial place, which hath no overseers, because there are none to receive them. 2 Salk. 487. Foley, 97, 98.

Whether the county need be mentioned in the body of the order.

In the said county of Westmorland] The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as in the said county, or in the county aforesaid. *Caf. of S. 151. 2 Sess. C. 181.*

T. 2 G. 2. K. and the parish of St. Stephenson. There was an order of removal by the justices of the town of *Bedford*, from the parish of *St. Peter's in Bedford*, to the parish of *St. Stephenson* in the county of *Bedford*, and it was only said in the margin the town of *Bedford*; without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this *Bedford* lay in, because the appeal must be to the justices of that county where it lies. And of this opinion was the court; but did not quash the order, by reason of a flaw in the *certiorari* by which it was removed. *1 Barnardist. 177. 196.*

In the case of Holbeck and Gilderson, M. 16 G. 2. The borough of Leeds was in the margin, and the direction was, To the churchwardens and overseers of the poor of the township of *Holbeck* in the said borough. And by the court, That is well enough. And the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as part of the order, and a clear plain reference to the county in the margin is sufficient: But in indictments, the county must be expressed in the body, and a reference to the county in the margin is not sufficient. *Burr. Settl. Caf. 198.*

Order to be executed by the parish officers removing.

And to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland] *E. 1 An. St. George's and St. Olave's.* The order was to convey one *Thomas Gill* to the parish of *St. Olave*, and it was directed, To the churchwardens and overseers of the poor of the parish of *St. Olave*. Quashed; for they ought and can only order the parish officers where the intrusion is made, to make the removal. *2 Salk. 493.*

Removals to places which have no overseers.

T. 17 G. 3. K. v. Tamworth. Two justices removed *Thomas Goff* and his wife and family, from the hamlet of *Bolehole* and *Glasfote*, to the parish of *Tamworth*, adjudging their settlement to be at *Sirefscote*, in the said parish of *Tamworth*, and ordering the overseers of *Tamworth* to receive and provide for them.—The sessions confirmed the order, and stated specially: That the pauper was legally settled at *Bolehole* and *Glasfote*, and was afterwards hired for a year, and served that year at *Sirefscote*, which is a hamlet consisting of one house only, and between three and four

hundred acres of land; but had never contributed to the poor of the said parish of *Tamworth*, nor had ever been assessed thereto; but had always been assessed and paid to the support of the church of *Tamworth*: That no overseers have ever been appointed for the said hamlet of *Sirefcote*: That the pauper and his family were delivered to the churchwardens of the said parish of *Tamworth*.—In support of these orders it was insisted, that the circumstance of the hamlet never having contributed towards those burthens which the law threw upon the whole parish, was perfectly immaterial, and that this place could never be considered as a vill, within the meaning of 13 & 14 C. 2. c. 12. there being here only one house, and no overseers; and that this was clearly a part of the parish of *Tamworth*.—On the other side it was contended, that this was a distinct vill independent of the parish of *Tamworth*, and to which no pauper could be sent until it had officers duly appointed: That the justices had stated this to be a hamlet, and adjudged, that the pauper had therein gained a settlement: That overseers ought to have been first appointed for this place, and then the pauper removed there, and not to the parish at large.—By *L. Mansfield*: There is no doubt at all: The place is averred to be within the parish where the hiring and service were had and performed, and it is no township or vill within the stat. of Car. 2. where officers are appointed, and therefore the justices could not remove the pauper there: Here are no overseers, no separate œconomy: The adjudication is to *Sirefcote*, as part of the parish of *Tamworth*. The other judges concurred. Both orders affirmed. *Cal. Caf. 28.*

In the case of *K. v. Rinton Abbey, H. 28 G. 3.* It was determined, that where the sessions adjudged as a *fact* a place to be a *vill* by reputation, the court of king's bench were precluded from going into that question. On which the counsel on both sides said, it was intended to be argued as if the sessions had adjudged it a *vill by reputation on the evidence stated* in the case. But the court observed, that the sessions were not to state cases for the purpose of taking the opinion of the court *on facts*; and in this case they had distinctly adjudged this place to be a *vill*. Therefore, without argument, the rule for quashing the order of sessions was discharged. *Caf. by Durnf. and East, 2 V. 207.*

Session not to state cases for the opinion of the court on facts.

[Of the parish of Penrith] *E. 11 Ann. Spittlefields and Bromley.* A person was sent to the parish of *Stepney*, who did not appeal. On removal of the order into the court of king's bench, exception was taken, that the removal

Removal to a parish within which there are several townships which maintain their poor separately.

ought to have been to the township of *Spittlefields*; for *Stepney* is divided into four townships, and the poor have been removed from one township to another in the same parish, and the statute takes notice of townships as well as parishes, and *Spittlefields* is a hamlet of *Stepney*. By the court: If a person is removed to a wrong place, that place ought to appeal, and so *Stepney* ought to have done if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the division of parishes into townships and villages, which maintain their own poor severally and distinctly; and *Stepney* here upon an appeal might have shewn that the person did belong to the township of *Spittlefields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole parish (though so divided), and have a superintendency over the whole villages and townships. 18 *Viner*, 468.

T. 10 G. 3. Kirkby Stephen and Wharton. The parish of *Kirkby Stephen* is a large parish consisting of ten different townships, who maintain their respective poor, and have separate overseers. The township of *Kirkby Stephen* and the township of *Wharton* are two of these ten townships. The pauper *William Greer* was removed from *Newport* by an original order directed to the officers of the parish of *Kirkby Stephen*, and adjudging his settlement to be in that parish, and removing him to that parish; and was brought, together with this order, by the overseers of *Newport*, and delivered to the overseer of the township of *Kirkby Stephen*. But neither the parish of *Kirkby Stephen* nor the township of *Kirkby Stephen* appealed from the order; and the pauper remained in *Kirkby Stephen*, and was maintained by a sister in the township of *Kirkby Stephen*, for near a year and an half; when, his sister dying, he asked relief of the township of *Kirkby Stephen*; who thereupon got him removed by an order of two justices to the township of *Wharton*. Which order was quashed upon appeal, subject to the opinion of the court of king's bench, upon the above recited state of the case. It was moved to quash the order of sessions, and urged that the township of *Kirkby Stephen* was not precluded from disputing the settlement with another township in the same parish. The first order of the two justices removes from *Newport* to the parish of *Kirkby Stephen*: And the parish, 'tis true, have not appealed against it. But the parish at large consists of several townships: Which several townships are not affected, as between one and

and another of these particular townships, by the non appealing of the parish at large. That if they had appealed, the determination must have been against them: For the order removed the pauper to the parish of *Kirkby Stephen*; and it is agreed on all hands, that his settlement was within the parish — On the other hand, it was insisted, that the township of *Kirkby Stephen* was bound and concluded by the order of removal from *Newport* to *Kirkby Stephen*, unappealed from. The original order calls *Kirkby Stephen* a parish, though it is only a township: But that mistake will not vary the law. They ought to have appealed: And upon an appeal, they might have availed themselves of that mistake; or of the merits, if they had any. But not having appealed, they are concluded against all the world. — By *L. Mansfield* and the court: The original order, made for the removal from *Newport* to the parish of *Kirkby Stephen*, must mean the township of *Kirkby Stephen*. The township was as a parish for this purpose, of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of *Kirkby Stephen* ought, in this case, to have appealed. They could not get rid of this order, but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices, upon the whole truth being disclosed, the pauper might, in the end of the inquiry, have been sent to *Wharton*. — And the order of sessions was affirmed. *Burr. Settl. Caf.* 664.

But in the case of *K. v. Swalecliffe*, it was determined, that the removal of a pauper to *Ascott*, a large, populous village, part of the parish of *Whichford*, but maintaining its poor in common with *Whichford*, was a mere nullity, and not conclusive although unappealed from. *Ca'd. Caf.* 248.

Removal to a village, a part of a parish, is void.

Upon the complaint:] *H. 12 G. 2 K. and Harsby*. It was moved to quash an order of removal, because it did not set forth any complaint made: And by the court, The objection is fatal, for the complaint is the foundation of the justices jurisdiction. *Andr.* 361.

Complaint to be made.

Upon the complaint of the churchwardens and overseers of the poor] *E. 1 An. Weston Rivers and St. Peter's*. Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers. By the court: This exception is fatal; for no one can disturb a man coming into a parish, but they that have authority to do it: A complaint from one not concerned

By the churchwardens or overseers.

is nothing ; it may be the parish is willing to keep him.
2 Salk. 492.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid M. 9 An. Spalding and St. John Baptist. The order was, To the churchwardens and overseers of the poor of the parish of Spalding, and to the churchwardens and overseers of the poor of the parish of St. John Baptist : Whereas complaint hath been made by you —. It was moved to quash the same for the uncertainty, because it did not say, by which : But by Parker Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. Foley, 267.

To the justices

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace An order was quashed, because it did not appear that it was made by two justices : It was only, Whereas complaint hath been made unto us ; without reciting their authority as justices. 5 Mod. 322.

The justices ought to be together at the hearing.

Two of his majesty's justices of the peace M. 4 G. K. and Westwoodhay. On complaint to one justice, two justices adjudge and remove, and it was held to be well : Otherwise, where one justice sets his hand to the order in the absence of the other. Cases of S. 107. Str. 73.

T. 11 G. 2. K. and Wykes. It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal. Str. 1092.

And, most undoubtedly, the justices ought to be both together at the hearing and determining ; though the practice in many places is otherwise.

But in the case of *K. v. Stotford, E.* 32 G. 3. it was determined, that an order of removal signed by two justices separately is not absolutely void, but only voidable if appealed against in a regular way. Durnf. and East, 4 V. 596.

To be justices of the peace.

Justices of the peace in and for the said county M. 12 An. Q. and Uplin. The order was quashed, because it did not say that they were justices of the peace, but only justices of the county. Cases of S. 27.

And to be for the county, &c.

In and for the said county M. 13 G. K. and Oulton. Exception was taken to an order for saying—unto us two of his majesty's justices of the peace in the county aforesaid ; for that by this it appears only that they lived in the county, and not that they were justices for that county : And the court held this to be a fatal exception, and

and quashed the order for that cause. 2 *Sess. C.* 76. 2 *Salk.* 474.

T. 23 G. 3. K. v. Andover. Exception was taken to an order of removal, That the magistrates stated themselves to be "two of his majesty's justices of peace for the borough or town and parish of *Andover*," &c. Which order was quashed at the sessions *for irregularity upon the face of it.* — In support of the order of sessions it was contended, that the form in which the order of removal was drawn, was equivocal and uncertain; that if "*and*" had been substituted for "*or*," an intelligible meaning had been conveyed; but that as it stands, they may be justices for the town and not for the borough, or for the borough and not for the town; but certainly not for both, nor does it appear for which. — *Buller J.* Whether for one or the other, enough appears to support the order; for both town and borough are coupled with parish. And they sufficiently appear to be justices of either of those places, for which they were empowered to make this order. — *L. Mansfield* and *Wilkes J.* concurring, (*Ashburst J.* absent.) Order of sessions quashed, and the original order affirmed. *Cal. Cas.* 373.

The said county] M. 8 W. It was objected to an order that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was over-ruled, for that the statute therein is only directory. 2 *Salk.* 473.

The said county of Westmorland] Where two counties are mentioned before, the *county aforesaid* is bad for the uncertainty. As in the case of *Stepney* and *Chester*, *E. 8 G. 2.* The order was directed to the churchwardens and overseers of the poor of two parishes in two different counties, and the justices call themselves justices of the peace for the *county aforesaid*. And the order was quashed; because it did not appear for which county they were justices. And the court can intend nothing. For those who act under a jurisdiction given by act of parliament, must shew their jurisdiction. *Burr. Sett. Cas.* 23.

Where two counties are mentioned in the order.

And one of us of the quorum] Abundance of orders formerly have been quashed, for not setting forth, that one of the justices was of the *quorum*; but now by the 26 *G. 2. c. 27.* no order shall be set aside for that defect only.

One of the quorum.

But if in fact neither of the justices shall be of the *quorum*, it seemeth nevertheless (except in the case hereafter mentioned, 7 *G. 3. c. 21.*) that such order shall not be good; for although the statute doth not require that the order

order shall set forth one of the justices to be of the *quorum*, yet it doth require that one of them shall actually be so. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other misdemeanors. That is to say, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of the peace had at first by their commission. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was superadded to the former some years after the institution of the office of justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no *quorum*.

E. 6 G. Albright and Skipton. Upon an appeal from an order of removal made by two justices one of the *quorum*; the sessions, reciting that they had perused the charter of *Albright*, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order of removal. But by the court: The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alledged; since they might have a jurisdiction though it need not appear upon the charter of *Albright*. The sessions should have said in general, that it appeared to them, that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices. *Str. 300.*

But now by the 7 G. 3. c. 21. This is in part remedied: For if in any city, borough, town corporate, franchise, or liberty, they have *one* (and no more than one) justice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the said justices shall be of the *quorum*.

Pauper to be
named if known.

If unknown.

That John Thomson] M. 11 An. Southwell and Need-
well. Whereas a certain woman hath intruded, These are
therefore to require you to convey: Objection, It is not
said who this woman was. And by Parker Ch. J. You
must

must either name her, or say a certain woman unknown.
Caf. of S. 57.

T. 10 An. Case of Newington. Whereas such a person hath intruded into the parish, and is likely to become chargeable; These are therefore to require you to remove him *with three children*. Quashed as to the children, for they have removed more than is complained of. *Caf. of S. 45.*

Mary his wife, Thomas their son] *H. 10 W. Johnson's* Children to be case. Order to remove a man and his family, not good; because too general; for some of the family might not be removeable. 2 *Salk.* 485. named.

M. 5 G. Beaton and Sifton. Order for removal of *Thomas Black* and his family: Upon the first reading quashed as to the family, because too general. *Str.* 114.

T. 9 W. Fixton and Ryllon. Order to remove *Jane Smith* and her five children: Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children; for she might have more children than five, and some of those five might have gained settlements. 1 *Seff. C.* 11. *Foley*, 278.

T. 8 G. Hobey and Kingsbury. Two justices adjudging the settlement of the husband to be at *Kingsbury*, and that he is likely to become chargeable to *Hobey*, send him, his wife, and son of one year old, to *Kingsbury*; and whether this was good as to the wife and child, was the question: And it was held to be well enough; and the order was confirmed. *Str.* 527.

Thomas their son aged eight years, and Agnes their daughter aged four years] *M. 9 An. 2. and Middleham.* Order to remove a child, of the age of ten years, to *Middleham*, because *Middleham* was the place where his father was last legally settled. Quashed by the court; for that there was no adjudication that *Middleham* was the place of the child's last legal settlement, and at that age it might have gained a settlement. *Foley*, 271. And their ages.

T. 10 An. Ringmore and Petworth. The order was, Whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at *Ringmore*. It was moved to quash the same, because the children's ages were not set forth. But by the court: It is not necessary in this case; for the order says, they were last legally settled in *Ringmore*, and then no matter what their ages are. *Caf. of S.* 41.

H. 11 G. K. and Trinity. This rule was laid down; Every order that concerns the removal of a father and his children,

children, ought to shew the ages of the children, for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right; but if it appears upon the order that the child was above seven years old, the order must set forth, that such child hath not gained a settlement in his own right. 2 *Seff. C.* 74.

So in the case of *Bowling and Bradford*, *H. 15 G. 2.* The order removed the father and children (without setting forth their ages) from *Bradford* to *Bowling*, and adjudged *Bowling* to be the place of the father's last legal settlement. By the court: The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out (to shew that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. *Burr. Settl. Cas.* 177.

Must have come to inhabit.

Have come to inhabit] *E. 12 An. 2.* and *Graffham*. The order sets forth, that *Henry Tate* and his wife do endeavour to intrude into the parish. And quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it. *Cas. of S.* 16.

And not gained a settlement.

Not having gained a legal settlement there] *E. 1 An. Wotton Rivers and St. Peter's*. Exception to an order of removal, that it was not said, that the pauper did not rent a tenement of 10l. a year, according to the words of the act. But as to this the order was held good. 2 *Salk.* 493. 3 *Salk.* 254.

Nor produced a certificate.

Nor produced any certificate owning them or any of them to be settled elsewhere] For by the 8 & 9 *W. c.* 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order set forth that they are actually become chargeable, then this clause therein, concerning the certificate, is superfluous.

Must be likely to become chargeable.

Likely to become chargeable] *Scrivenham and St. Nicholas*. Order, not saying that the party was likely to become chargeable: Quashed. 3 *Salk.* 255.

H. 4 G. Tealby and Wulerton. Order, Whereas com-
plaint

plaint hath been made, that *Anne Stamp* may become chargeable.—We adjudge the same to be true. Quashed; for that the act enables the justices only to remove persons likely to become chargeable, and not persons that possibly may be chargeable, for no one can say who may not be chargeable; and there is as much difference in this case between *may* and *likely*, as between a possibility and a probability. 1 *Seff. C.* 117. *Str.* 77.

T. 10 An. Order, Whereas such a person will become chargeable, if permitted to abide. Objected, that is uncertain; it may be ten years hence: Quashed. *Cases of S.* 39.

Note; It doth not appear from any adjudged case, that upon appeal it was ever controverted, whether the person was or was not likely to become chargeable. And in the case of *South Sydenham* and *Lamerton*, *T. 3 G.* Mr. J. *Eyre* said, That by the words of the act, living on a tenement under 10l. a year, and likely to become chargeable, are convertible terms. 1 *Seff. C.* 115.

Nevertheless, complaint must first be made, that the party is likely to become chargeable, before the justices can remove. And, in the case of *K. and Wykes*, *T. 11 G. 2.* an information was granted against a justice, for taking the examination of a person in order for his removal, upon the officers complaining, that he endeavoured to gain a settlement in the parish contrary to law; without complaining at the same time, that he was likely to become chargeable. *Andr.* 238.

To the said parish of Orton] *T. 10 An. Q.* and *Bradford*.—Likely to become chargeable, but not said to what parish: Quashed. *Cases of S.* 40. To the parish removed from

But in the case of *Barholm* and *Witham super montem*; *H. 5 G.* By the court: *It appearing to us that he is likely to become chargeable*, is sufficient, without saying *to the parish from whence removed*; for it is not to give a jurisdiction, but only the reason of the judgment. *Str.* 142.

And, *M. 7 G. Maidstone* and *Dething*. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething*, and is likely to become chargeable, without saying farther, *to the said parish of Dething*. *Str.* 393.

And, *E. 12 G. K. and Leofield*. An order of removal, whereby a person was adjudged likely to become chargeable, without saying, *to the parish from whence removed*, was confirmed. *Str.* 698.

These indeed are but scraps of cases, minuted down by gentlemen for their own private use, and therefore perhaps
not

not certainly to be relied on. And in the case of *St. Nicholas Gloucester* and *St. Peter's Bristol*, H. 11 G. Upon an order of removal of *Mary White*, the reciting part of it was, Whereas the pauper was likely to become chargeable to the parish of *St. Nicholas*; but in the adjudicating part it was only said, that she was likely to become chargeable, without saying to the parish of *St. Nicholas*. The court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the court will not intend a jurisdiction in the justices, where they do not entitle themselves to it upon the face of the order. 2 *Stiff. C.* 73.

And in the case of *Bourne and Spalding*, E. 8 G. 2. The complaint was, that the pauper was likely to become chargeable to the parish of *Spalding*; and the adjudication was, that the pauper was likely to become chargeable, generally, without saying to the said parish of *Spalding*. And by *L. Hardwick*, Ch. J. There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish. And he cited the above case of *St. Nicholas's* and *St. Peter's* as similar to the present: And said, that the case of *Barholm and Wisbam* (a) was not finally determined by the court, but was referred to the judge of assize. And he added, that there was no case that he could meet with, upon the strictest enquiry, where an adjudication at large, without some words of reference to the complaint, was holden to be good. *Burr. Settl. Cas.* 39.

So in the case of *Uffulm and Glyfbydon*, M. 13 G. 2. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "And whereas upon due examination and enquiry it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By *Lee* Ch. J. and the court: The objection is fatal. A complaint must appear of the paupers being likely to become chargeable to the parish from whence removed; and there must be an adjudication of the truth of it. For the justices have no authority without such complaint and adjudication. We cannot support an order by implication. There is no necessity indeed for any particular form of words. But

(a) *Ante*, this title.

there must be an adjudication of it in some words or other.
Burr. Settl. Cas. 138.

And in the same term, between the inhabitants of *Netherberton* and *Hoblench*, an order was given up as indefensible, on the like objection. *Burr. Settl. Cas.* 139.

It may be proper to take notice in this place, of the act of the 3 G. 3. c. 8. concerning officers, soldiers, and sailors, who served in the late wars; which makes a provision, with respect to such persons, that had not been made by any former act. Before this act, they might have set up trades in any city, town corporate, or other place, without being molested by reason of their exercising such trade; but for other reasons they might have been removed; as if they did not bring a certificate, and were likely to become chargeable. But now by this act, such officers, mariners, soldiers, and marines, who have served since Nov. 29, 1748, and not deserted [and by the 24 G. 3. c. 6. the same is further extended to those who have served since 1st April 1763. And by 26 G. 3. c. 107. s. 113. the same is extended to all militia men who have personally served in actual service], and also their wives and children, may set up such trades as aforesaid, without any molestation by reason of the using of such trades, nor shall they or their wives or children, *during the time they shall exercise such trades*, be removeable to their place of settlement, until they shall become actually chargeable. Two justices, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them an attested copy of their affidavit, which shall be admitted as evidence in any general or quarter sessions.—So that such persons now, in like manner as certificate persons, shall not be removed until they shall actually become chargeable. So that their having served has the effect, in that respect, to a certificate; and in many cases is preferable to a certificate, since thereby they are in a better capacity of obtaining settlements for themselves, their children, servants, and apprentices.—And therefore the adjudication, as to such persons, must be that they are chargeable, and not that they are *likely to become chargeable*; for until they are chargeable, they cannot be removed.

Officers, soldiers, sailors, and militia men, must be actually chargeable before they can be removed.

During the time they shall exercise such trades] H. 29 G. 3. *X. v. Gwenop*. A rule had been obtained to shew cause why an order for the removal of *George Trevorton*, and his family, from *Penryn* to *Gwenop* both in *Cornwall*, and also an order of sessions confirming the same, should not be quashed. The sessions had returned the following case:

That

That *George Trevorton* was a married man, and had a family, and had been drawn to serve in the militia within the said county in 1778, and was duly sworn, and served his full three years in actual service in the said militia; and at the end of that time was discharged. His occupation was that of a husbandman, working at daily wages for the support of himself and family; his residence had been for some years last past in *Penryn*, and he had never been chargeable there-to; and his last legal settlement was in *Gwenesp*. He therefore insisted that, having served the said 3 years in the militia, he was entitled to the privilege and benefit granted to militia men under 26 G. 3. and the other statutes in that case made, and was therefore irremovable; but the sessions considered that his was not a *trade* within the meaning of the statutes.—*Caldecot*, in support of the order of sessions, was stopped by the court.—*Erskine* and *Plummer*, *contra*, contended that the pauper was irremovable from the parish of *Penryn* by virtue of the 26 G. 3. c. 107. s. 131. which gives two distinct privileges to persons in his situation; first, That every person, having actually served in the militia, and being a married man, may set up and exercise any trade in any town; and 2dly, That *no such militia man* shall be liable to be removed out of any such town until he become chargeable. The 2d privilege is totally unconnected with the first, and the words “*no such militia man*” refer to the description of the militia man at the beginning of the section who shall be entitled to this privilege. So that the only qualifications required in a person claiming either of these benefits, are his having actually served in the militia, and being a married man. The militia man thus qualified, may take one of these privileges without the other. If the 2d benefit intended to be given by the act were not distinct from the first, any militia man who intended to set up any trade might be removed before he could put his design into execution. And if such had been the intention of the legislature, instead of saying that every such militia man, *may set up, &c.* any trade, *and shall not be removeable*, they would have said, every such militia man *having set up* any trade, &c. shall be irremovable. This may receive an explanation from 24 G. 3. c. 6. which enables soldiers, &c. to set up any trade without being liable to the penalties of 5 El. c. 4. which enacts that *such* soldiers, &c. (without mentioning that they are to be of any trade) shall not be removeable till they become chargeable. But even if the construction of that statute were otherwise, and that it intended that only those,

who

who exercised trades, &c. should be irremovable; still as 26 G. 3. is contradictory to it, and of a later date, it virtually repeals the former one. And that the 26 G. 3. intended to enlarge the privileges granted by the former statutes, is evident from a review of 22 G. 2. c. 44. for that gave soldiers the liberty of setting up trades, but this gives a new and distinct privilege; namely, that of being removable only when chargeable. Another argument also arises in favour of this construction, from considering the situation of ballotted militia men, who are for the most part husbandmen and below the station of tradesmen; for this privilege, if it were confined to tradesmen, would only be enjoyed by a small number of the militia.—*Aschurst J. (a)*: This case seems to be extremely clear both on the words and meaning of the act of parliament. The first act on this subject is 22 G. 2. c. 44. which is confined to mariners and soldiers: And the preamble of it states that mariners and soldiers of different trades, and apprentices who had not served their times, were prohibited from setting up their trades in corporate towns, &c. either by reason of bye-laws therein made, or of 5th Eliz. c. 4. Now that was the inconvenience intended to be remedied; for which purpose it was enacted, that all such mariners and soldiers might set up their trades in any town; notwithstanding those disabilities. This therefore was a proper indulgence given to those persons who were taken out of their business in order to enter into his majesty's service. And it is observable, that the 26 G. 3. c. 107. upon which this question arises, has an express reference to the former one; and therefore we must suppose that the legislature had in view the same inconveniences which were intended to be remedied by 22 G. 2.: And this latter act says, that every person having served in the militia, &c. may set up any trade as freely and with the same provisions, and under the same regulations, as any mariner or soldier could do by virtue of 22 G. 2. And that *no such militia man shall be liable to be removed, &c.* This act being made in *pari materiâ* with the 22 G. 2. and expressly referring to it, may be considered as incorporated with it, and that relates to *persons in trade*, but not to common labourers, who would not suffer the same inconveniences as the former, for they might easily find employment wherever they might happen to be:—*Buller J.* If the legislature had used any words giving these privileges generally to all militia men, I should not have been inclined to confine the operation of them;

(a) *L. Kenyon was absent.*

being of opinion that it would be the wisest law that could be made on this subject, that no person should be removed until he is actually chargeable. But as the legislature has not said so, we cannot make the law. The first argument is, that every militia man who has actually served and is married, is entitled to two privileges: but that is doing great violence to the words; for then we must suppose that two-thirds of this clause in the act have no meaning. But in considering the description of the persons intended to be benefited, every part of the clause must be attended to. For the privilege given in the first part of the section is, that such a militia man may set up any trade in any town, &c. as freely, and with the same provisions and under the same regulations, as any mariner or soldier can do by virtue of 22 G. 2. entitled, "An act to enable such officers, &c. to exercise trades:" then this statute goes on to say that no *such* militia man shall be liable to be removed out of *such* town. The word "*such*" is material in both these places. The first means *such* persons as have served, are married, and have set up trades; the other refers to the town where they are to exercise the trades. I agree that a militia man who has served, &c. cannot be removed before he has set up the trade, if he go there for that purpose; for he who is privileged *morando*, is privileged *cundo*. This question therefore is extremely clear on this act of 26 G. 3. c. 107. But if it be coupled with the 22 G. 2. c. 44. no doubt whatever can be entertained about it; for that is expressly confined to persons exercising trades. The object of that act was to protect soldiers, &c. against 5 Eliz. c. 4. and certain bye-laws in particular towns: but a labourer is not a trader within the statute of *Eliz.* The argument drawn from 24 G. 3. bears against the point for which it was mentioned; for if the words of 26 G. 3. be doubtful, reference must be made to 24 G. 3. c. 6. as they are made in *pari materia*; and by that it appears that the soldiers, &c. are only irremovable *during the time they exercise any trades*.—*Grose* J. delivered his opinion to the same effect.—Order of sessions confirmed. *Darns.* and *East*, 3 V. 133.

Turnpike gate keepers.

And by 7 G. 3. c. 40: The gate-keeper at any turnpike gate shall not be removeable from the toll-house, until he shall be actually chargeable. *s.* 46.

What shall be deemed due proof.

Upon due proof made thereof] *H. 10 G. Munger-Hunger and Warden.* Exception was taken to an order, for that it was said to be made upon *due examination*, without saying upon oath: But by the court, This is sufficient; for it is

is

is said to be made upon due examination, it shall be understood to be upon oath. 2 *Seff. C.* 40.

H. 13 G. 2. K. and Fisherton Dallermer. Upon due consideration, was held to be sufficient; for that due consideration implies a due examination. *id.* 45.

Upon the examination] *T. 12 W. Ware and Stanstead Mount Fitchett.* Exception to an order, for that it was said, it appears upon examination *before us, or one of us.* By the court: The examination ought to be before both, because both are to make the judgment of removal. And *Gould J.* said, the statute directed, and the practice was, to make complaint to one justice, and he grants his warrant to bring the pauper before two justices, and then they two examine and remove. 2 *Salk.* 488.

One justice may order a pauper to be brought to be examined.

And in the case of *K. v. Wykes*, it was held, that the complaint may be to one justice, but the examination ought to be to two. *Str.* 1092.

In the above case of *K. v. Wykes*, one justice took the examination, and other two justices removed upon that sole examination, and in the order did set forth that the party was examined before themselves; for which, and for not summoning the party before them, an information was granted against the two justices. *Andr.* 238.

To be examined by the same justices who remove.

M. 13 G. 2. Coln St. Aldwin's and Highworth. The order of removal appeared to be wholly grounded upon an examination taken by two justices of another county; and was therefore quashed. They ought to have examined into the matter themselves; and in the presence of both together, and not separately. And though they were not bound to set forth the grounds of their adjudication; yet when they do set them forth, the court are to judge of them. And in this case, the examination which was relied upon being taken by two justices of another county, and the person examined by those justices remained still alive for ought that appears to the contrary; it is plain this deposition ought not to have been received as evidence to ground their adjudication upon; though it might perhaps have been used as concurring evidence. And *L. Ch. J. Lee* said, he had often heard it declared, that both justices ought to be together at the *viva voce* examination of the witnesses. And *Mr. J. Page* said, he remembered a case, wherein it was determined, that both justices must be present, and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself.

Examination taken by justices of another county.

Burr. Settl. Cas. 136.

T. 30 G. 3. K. v. Eriswell. Two justices removed *John Sharpe* from *Icklingham All Saints*, to *Eriswell*, both

Examination taken by justices of the same

county, but not those that remove.

in *Suffolk*. The sessions on appeal confirmed the order, subject to the opinion of the court on the following case: The pauper came into the parish of *Icklingham All Saints* in 1767, where he was employed as a day labourer to work on the navigation. In 1779 he was taken before *T. Ball D. D.* and *C. Toekie* clerk, two justices for the said county, by the overseers of *Icklingham*, to be examined as to the place of his settlement; in consequence of which, his examination was taken upon oath before those two justices, and signed by the pauper; by which examination it appeared, that he had gained a settlement by a hiring and service for a year in *Eriswell*, and had done no act to gain a settlement elsewhere. No proceedings were had in consequence of this examination, until this order of removal was applied for and made. [N. B. The two justices who made the order of removal were *not the same* two justices who took the examination.] The pauper, from the time of the examination being taken, continued to reside in *Icklingham* for about 5 years, without being chargeable to that parish, when he became insane, and continued so to the time of his removal to *Eriswell* as aforesaid, and also at the time of hearing the appeal. On the part of the respondents this examination was offered in evidence, and objected to on the part of the appellants, but was received by the court, the handwriting of the justices who took the same being first proved; and upon that, and other evidence, the sessions confirmed the order; but they also stated, that in their opinion the evidence produced, exclusive of the said examination, was not sufficient to warrant that determination. After hearing arguments on both sides, the court were divided in opinion, and the judges gave their opinions at great length. *Ashburst* and *Buller* J^s. were for confirming, and *L. Kenyon* Ch. J. and *Grise* J. were for quashing the orders; but there not being a majority of the court of opinion that the rule for reversing the orders should be made absolute, they consequently stand confirmed. *Durnf. and East*, 3 V. 707.

Examination taken and order signed by two justices separately, is not void but only voidable if appealed against in due time.

E. 32 G. 3. K. v. Stotford. On an appeal against an order, by which *M. Shaw* and his family were removed from *Stotford* to *Chilvers*; the order was quashed, subject to the opinion of the court on the following case: The pauper was born at *Stotford*, but his father's settlement was at *Chilvers Coton*, and the pauper had never gained any settlement in his own right, except as follows: He and his family were, in 1776, removed from *Sandon* to *Stotford* in the usual form, and were delivered to the parish officers of *Stotford*, who received them, and did not appeal. The

pauper

pauper and his family has ever since till the present removal occasionally resided in, and been relieved by *Stotford*. It was then proved by the respondents (but which evidence was objected to by the appellants, but over ruled by the court) that the order of removal from *Sandon* to *Stotford*, and the examination on which it was founded, were in fact taken and signed by the two justices *separately, and not in the presence of each other*, and that one of them, though a magistrate for the county of *Hertsford*, took the examination, and signed the order at his own house situate in that part of *Roxton* which lies in *Cambridgeshire*; *Roxton* lying partly in each county.—The court took time to consider.—*L. Kenyon* Ch. J. said, that he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question; and that the result of his deliberations and of the rest of the court was, that the former order was only *voidable* not absolutely *void*; and therefore that it was necessary for the parish who wished to avoid it, to have appealed against it in the regular course of proceedings. That it would be extremely inconvenient to permit a parish to set aside an order of removal at any distance of time, which had been acquiesced under for years without any dispute; and that a distinction had always prevailed between void and voidable instruments; a strong instance of which was that on the construction of the stat. *Westminster* 2. c. 1. which, though it enacts that all fines contrary to that act shall be *ipso jure* null, has been held to mean only voidable by some legal proceeding. Order of sessions, quashing the original order, confirmed. *Durnf. and East*, 4 V. 596.

Examination of the said John Thomson] *T. 11 & 12 G. 2. K. and Wykes*. A person ought to have notice, and be heard before he be removed; for he may produce a certificate, or give other sufficient security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer; and therefore natural justice requires that he be not condemned unheard. *Andr.* 238.

The pauper himself ought to be heard.

But in the case of *K. v. Bagworth*, *E. 22 G. 3*. Objection was taken to the form of the order. that it did not appear to have been made upon proper and sufficient evidence; that it was made only upon examination of the premises; that an enquiry generally into the subject matter is not enough; that the pauper himself must be examined; and was so holden in *K. v. Wykes* and others. But

Is not necessary in all cases that the pauper himself should be examined.

by the court; It cannot be necessary in all cases that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule: The case of *Camberbach* is in point; in that case *Holt Ch. J.* says, "If it can be, 'tis fit it should be so, but not absolutely necessary." *Cald. Caf. 179.*

A pauper refusing to be examined.

In the case of *K. v. Jackson* and another, *E. 27 G. 3. Chambre* shewed cause against a rule why an information should not go against the defendants, who were justices of the borough of *Kendal* in *Westmorland*, for misbehaviour in their office, who were charged with having committed a pauper to prison, whom they were examining relative to his settlement, for not answering a particular question propounded to him, under which commitment he continued in prison for 13 days, which it was contended by *Law* was so manifestly illegal that they must have known they were exceeding their authority, and therefore, that it must be intended that they acted from corrupt motives. But it appearing on reading the affidavits on both sides, that no corrupt motives were to be imputed to the defendants, the rule was discharged.—And *Alsbury J.* said, he would not then decide whether magistrates have or have not a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined.—*Buller J.* said, With regard to the power of commitment, he did not know how justices were to act, unless they had such a power. This commitment, "until he should answer," he thought right; and tho' the pauper continued in prison under the commitment 13 days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions. Rule discharged. *Durnf. and East, 1 V. 653.*

The justices to make an adjudication.

Do adjudge the same to be true] *T. 13 W. Suddescomb and Burwash.* Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices. *2 Salk. 491.*

H. 4 G. K. and Westwood. Order quashed, because the justices only say, *We order him to be removed to such a place as the place of his last legal settlement*, without adjudging that to be the place. *Str. 73.*

T. 3 & 4 G. 2. K. and Minchin-hampton. Order, Whereas complaint is made to us, that such a person is now become chargeable, we do adjudge that the last place of his lawful settlement is in the parish of *Minchin-hampton*. Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason. *2 Sess. C. 93.*

T. 4 G. Stallinburgh and Haxhay. On examination we do believe the same to be true. Quashed; for a man may believe a thing on uncertain evidence. *1 Sess. C. 131.*

E. 10 An. Waltham Magna and Parva. Whereas such a person is likely to become chargeable, as we are credibly informed, these are therefore to require you to remove: Quashed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another. *Cas. of S. 38.*

And we do likewise adjudge that the lawful settlement] *E. 9 W. Bury and Arundel.* Whereas complaint hath been made unto us, that *Jacob Duckin*, with his wife and children, came from his place of abode and last legal settlement in *Bury* to *Arundel*, We therefore require you to remove: Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that *Bury* was, which doth not appear whether true or false. *2 Salk. 479.*

T. 12 An. Eglium and Hartley-wintly. An order adjudges that a man was settled at such a place; and therefore they remove his widow thither. Quashed; for that here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband. *1 Sess. C. 45.*

T. 3 & 4 G. 2. K. and Warnhill. Adjudication that the last legal place of the pauper is at *Warnhill* in the county of *Berks*. Quashed; for that is no adjudication of the settlement. *2 Sess. C. 92.*

M. 3 An. It was held, that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged. *2 Salk. 473.*

M. 12 An. St. Mary Ottery and St. Mary's. The justices in their order say, that the poor person was last settled there according to their knowledge. By the court: They should have said, he was last settled there; an order is a

judgment, and must be certain and positive : he might have been settled elsewhere, and they not know it. *Quashed, Cases of S. 32.*

To be provided
for where re-
moved to.

And provide for them] The statute directs, that the place whither they are sent shall receive and *provide* for them ; for which reason the same is inserted here in the order : but it seemeth that when the removal is into another county, those words are unnecessary, because ineffectual ; for that the justices in one county cannot take order for the relief of poor persons in another county.

Other removals
than to the per-
sons settlement.

[Besides this general form of removal to the place of settlement, there may be other removals, as of wives to their husbands, children to their parents, apprentices or servants to their masters, or of persons brought illegally from one parish to another. But this is not in pursuance of the statute of the 13 & 14 C. 2. but of the general power of the justices in regulating matters relating to poor persons. Thus in the case of *K. and Banbury*. A constable without warrant brought a child from *Broughton* to *Banbury*. Two justices of *Banbury* made an order, reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrongdoers ; and therefore that part of the order was affirmed ; but it ought not to be said, to be there provided for ; but they are to be left to take their course according to law : therefore that part was quashed. *Comb. 372.*

So in the case of *K. and Gravesend, B. 13 W.* Two justices send *Jane Godbury* from *Gravesend* to *Lawton* her master in *Chadwell* (with whom she was hired as a servant for a year) until she should be discharged. Afterwards, on the 21st of *November* (the first order being made the 6th of *November* by the justices of *Gravesend*) another order was made by two justices of the county of *Essex*, to send the same person from the parish of *Chadwell* to the parish of *Gravesend*. It was insisted that the second order was ill, being made before any appeal from the first order, or discharge from the service. But not allowed by the court : For the first order was to send the person to her master, and not to send her to the parish of *Chadwell* as the place of her settlement. *Comyns, 97.*—For both the orders in this case might well stand together : and the question upon the merits might be determined on appeal to the second order.]

SO much concerning the usual form of an order of removal: And after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was said by *Holt Ch. J.* (1 *Salk.* 406.) that the most regular way for the justices to proceed is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers, to convey the persons to the parish to which they ought to be sent, and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order: otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against? It is usual in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and if then there appear to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth that the court may record thereupon likewise, that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have no power to enquire concerning the removal, for that as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may enquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be thus:

Of filing orders of removal at the sessions; and making a record of the whole proceedings.

Westmorland. **B**E it remembered, that on the nineteenth day of January, in the thirty-second year of the reign of our lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Middleton in the county aforesaid, Roger Thirbeck,

beck, overseer of the poor of the township of Middleton aforesaid in the county aforesaid, cometh before us, John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, And complaineth to us the said justices, and giveth us to understand and be informed, that Solomon Caradice, son of Alice Caradice, aged nine years, hath come to inhabit and doth inhabit in the said township of Middleton in the county aforesaid, and is likely to become chargeable to the said township, and that the said Solomon Caradice hath not gained any legal settlement within the said township, nor hath produced any certificate owning him the said Solomon Caradice to be settled elsewhere; and thereupon he the said Roger Thirnbbeck prayeth our warrant to remove and convey the said Solomon Caradice to the parish or place where he the said Solomon Caradice was last legally settled.

And on the said nineteenth day of January in the year aforesaid, at Middleton aforesaid, in the county aforesaid, Margaret Caradice, grandmother of the said Solomon Caradice, cometh before us the justices aforesaid, and upon her oath on the holy gospel to her then and there by us the justices aforesaid administered, deposeth and sweareth, that she the said Margaret Caradice had a daughter whose name was Alice Caradice, which Alice Caradice was never married, and is now dead, and that she the said Alice Caradice did bear the said Solomon her son, at the parish of Beetham in the county aforesaid, and that the said Solomon hath been carried or gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said township of Middleton with William Caradice grandfather of him the said Solomon.

Whereupon, and on due consideration had of the premises, we the justices aforesaid, on the said nineteenth day of January, in the year aforesaid, at Middleton aforesaid in the county aforesaid, do make our warrant under our hands and seals in the form and words following; that is to say, [Here set forth the warrant of removal.]

And afterwards, on the twenty-first day of January in the year aforesaid, at Middleton aforesaid in the county aforesaid, the said Roger Thirnbbeck, overseer of the poor aforesaid, cometh before us the justices aforesaid, and upon his oath on the holy gospel to him by us the said justices administered, deposeth and sweareth, that on the twentieth day of January in the year aforesaid,

aforesaid, be the said Roger Thirnbeck did remove and convey the said Solomon Caradice from and out of the said township of Middleton to the said parish of Beetham, and him the said Solomon Caradice, together with a true copy of our warrant aforesaid, did deliver to O. P. overseer of the poor of the parish of Beetham aforesaid, at the parish of Beetham aforesaid, in the county aforesaid. In witness whereof, we the said justices, at Middleton aforesaid, in the county aforesaid, the twenty-first day of January in the year aforesaid, to this present record do set our hands and seals.

And to this may be annexed the order of removal, confirmed at the sessions on appeal, or not appealed against. And it may be proper to have duplicates; one filed at the sessions, and the other kept by the township.

By the 3 *W. c. 11.* as aforesaid, there is a penalty of 5*l.* inflicted on the churchwardens or overseers not receiving a person sent by warrant of removal. On which this case happened: *M. 28 G. 2. K. and Davis.* Indictment for refusing to receive a pauper, sent by order of two justices to the liberty of the *Tower.* Plea, not guilty. Verdict against the defendant. It was moved in arrest of judgment, that the 3 *W. c. 11.* having directed another method of punishment, to wit, a fine to be levied by warrant of distress in a summary way, that should be strictly pursued.—*Dennison J.* If a statute create a new offence, and give a punishment, that rule must be followed; but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute give another punishment, the prosecutor has his election. This was an offence before the 3 *W.* Such a parish officer might have been indicted on the 13 & 14 *C. 2. c. 12.* or what would have become of a pauper in case of disobedience between the passing those acts? But the 3 *W. c. 11.* does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment.—*Foster J.* In all cases where a justice has power given him to make an order, and direct it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable. And judgment was given against the defendant. [To which may be added, that the statute of 13 & 14 *C. 2. c. 12.* requires in express words, that such officer refusing *shall be bound over to the assizes or sessions there to be indicted.*]

Penalty on refusing to receive persons removed.

If the person removed returns of his own accord, without a certificate; the aforesaid act of the 13 & 14 *C. 2.*

Persons removed returning to the place removed from.
6. 12.

c. 12. and also the vagrant act of the 17 G. 2. c. 5. have directed that he shall be sent to the house of correction, according as is above expressed. In the case of *K. and Angell*, T. 8 G. 2. The justices of *Berkshire* had a petty sessions to search after vagrants, and a poor man residing in the parish of *Bingfield*, being examined, confessed himself to be settled in the parish of *Sunning*; whereupon the justices ordered him to be removed to *Sunning*. On his returning from *Sunning* without a certificate, the defendant, who was one of the justices that had been present at the said petty sessions, did, without any summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this, the court was moved to grant an information against the justice. The court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to the parish of *Bingfield*; but yet, as that was only a mistake of judgment, the court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclinable to grant an information; but as no malice appeared in the justice, the court allowed the prosecutor to accept of some proposal made by the justice, to make him satisfaction. *Cases in the time of Lord Hardwicke*, 124.

In the case of *Baldwin* and his wife against *Blackmore* esquire, E. 31 G. 2. *Baldwin* and his wife were removed by order of two justices from *Marsden* to *Banknewton*. Which order was not appealed against. Afterwards, they both of them returned to *Marsden* without bringing a certificate. Of which, complaint being made in writing and upon oath to the defendant Mr. *Blackmore*, who was a justice of the peace for the county of *Lancaster*, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, until they should be discharged from thence by due course of law. Upon the trial of this cause, there was a verdict for the plaintiff, and 1 s. damages, subject to the opinion of the court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? On the argument of this cause, L. *Mansfield* intimated, that it would be a very right thing

to compromise this matter ; and he desired to be informed how the usage had been, about sending the wife to the house of correction with the husband : (tho' it would not indeed, as he observed, alter the law.) Afterwards this case being mentioned as standing for the opinion of the court, Mr. Norton (for the defendant) said, he had several certificates of its being the practice, for justices to commit the wife, as well as the husband, for returning to the parish from whence they had been removed, altho' she so returned with her husband.—L. Mansfield delivered the resolution of the court : He observed, that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1s. damages. The court would gladly therefore have leaned towards excusing this gentleman from suffering for what he had honestly and without any bad intention done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case ; and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded ; tho' it doth not appear upon which of the two the justices proceeded. These two acts are, the 13 & 14 G. 2. c. 12. (a law made before the certificates under the late acts existed ;) and the 17 G. 2. c. 5. (which relates to persons returning without bringing such a certificate.) Now the warrant is not within the former of these acts : The commitment is, *till discharged by due course of law* ; whereas upon this act it should have been, *to the house of correction, there to be punished as a vagabond, or, to a publick workhouse, there to be employed in work and labour*. Nor can this warrant be good on the latter act ; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month* : Whereas this warrant is quite general : It is an indefinite commitment ; not for a precise limited time as the act directs. Therefore the warrant of commitment is totally illegal : and consequently, the plaintiff is intitled to the damages that he has recovered. *Burr. Mansf. 595.*

[Note, It seemeth adviseable, if the party returns without a certificate, not to send him to the house of correction till the time for appealing against the order for removal shall be expired ; for the sessions may quash the order.

order. And the statute of C. 2. says, if he shall not remain in such parish *where he ought to be settled*, he shall be sent to the house of correction. And the 17 G. 2. says, All persons who shall *unlawfully* return to such parish or place from whence they have been *legally* removed by order of two justices. shall be so sent to the house of correction. It is true, the order may be supposed *legal* till reversed: But it may put the pauper to great inconvenience, in removing his goods, family, and trade; and then returning (possibly) after the next sessions.]

ii. *Order of removal of a certificate person.*

Removal of certificate persons.

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be said under this head, concerning the removal of certificate persons, that as to this kind of removal there is scarce one good order (which is a little surprizing in a matter of daily practice), yea scarce one which is capable of being amended even by the statute of the 5 G. 2. for there are objections which go to the very essence and substance of the order, especially the want of proper adjudications, either that the party is become chargeable, or of the place of his last legal settlement (for he may have gained one after the certificate), or both; for judgment without adjudging, is a contradiction; and where there is no judgment, there is in strictness nothing to appeal against, but only an order that the parish shall receive and provide for a person who for aught appears doth not belong to them.

By the 8 & 9 W. c. 30. *If any person who shall come into any parish or place, there to reside, shall deliver a certificate to one of the churchwardens or overseers there, such certificate shall oblige the parish or place granting the same, to receive and provide for the person mentioned in the said certificate, together with his family, as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall be lawful for any such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought. l. 1.*

And by the 3 G. 2. c. 29. *When any overseer or other person shall remove back any persons or their families, residing*
under

under a certificate, and becoming chargeable, to the parish or place to which they shall belong; such overseer or other person shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such persons, by the churchwardens or overseers of the place to which such persons are removed; the said charges being first ascertained and allowed of by one or more justices for the county or place to which such removal shall be made; which said charges so ascertained and allowed, shall, in case of a refusal of payment, be levied by distress and sale of the goods of the churchwardens and overseers of the place to which such certificate person is removed, by warrant of such justice or justices. l. 9.

Form of an order of removal of a certificate person.

Westmorland. { To the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland.

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, having for some time last past dwelt in the parish of Orton aforesaid, being allowed so to do by reason of a certificate, bearing date the — day of — in the year of our Lord — under the hands and seals of A. C. and B. C. churchwardens, and A. O. and B. O. overseers of the poor of the said parish of Penrith, attested by A. W. and B. W. two credible witnesses, and allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of Cumberland, according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of Orton: And whereas it appears to us, as well upon the oath of the said John Thomson as otherwise, that neither they the said John Thomson, Mary his wife, Thomas and Agnes their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premises, it appears to us, and we do hereby adjudge, that the said John Thomson, Mary his wife,

wife, and Thomas and Agnes their children, are become chargeable to the said parish of Orton, and that the place of the last legal settlement of them and every of them is in the said parish of Penrith in the said county of Cumberland: These are therefore to require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants of your parish. Given under our hands and seals the ——— day of ——— in the year of our Lord ———

Allowed by J. P. and K. P. esquires, two of his majesty's justices of the peace] *H. 9 An. K. and Newton.* Order for removing a certificate person, not setting forth that it was allowed by two justices, but adjudging the parish which granted the certificate to be the place of the last legal settlement. By Mr. J. Probyn: The order is good, for it sets out that the pauper came by certificate; and adjudges that he was actually chargeable, and that *Newton* was the place of his last legal settlement, he having gained no settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good, if there had been no certificate. 1 *Self. G.* 149.

M. 7 G. Barleycroft and Cole overton. Order of removal of a certificate person; it was not said that the certificate was attested, but only that it was allowed. But by the court: The attestation is by the statute made previous to the allowance; and therefore when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed. And the order was confirmed. *Sir.* 402.

Not removable
till actually
chargeable.

Are become chargeable] *E. 9 An. 2. and Brumstead.* An order of two justices for the removal of a man that came into a parish by a certificate, was quashed upon this exception; It was said in the order, that they removed him because he was likely to become chargeable: And the whole court were of opinion, that the justices cannot re-

move

move a person that comes into a parish by a certificate, till he is actually chargeable to the parish. 2 Salk. 530.

H. 4 G. Terby and Willerton. The justices remove a certificate woman, being *likely* to become chargeable. But by the court: She is by the statute not removeable till she actually becomes chargeable. And the order was quashed. *Str.* 77.

And we do hereby adjudge] *T. 2 An. Maldon and Fleetwick.* An order was made, reciting, that whereas complaint hath been made unto us, that such a person, who is lately come into the parish with a certificate, is actually chargeable to the parish; these are therefore to require you to remove: And quashed, for that there was no adjudication. 2 Salk. 530.

T. 15 G. 2. Great Bedwin and Wilest. Order of removal of a certificate person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificate person is actually become chargeable. On appeal, the sessions in pursuance of the 5 G. 2. amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, Whether these amendments went only to matter of form, or to the substance and merit of the order? By *Lee Ch. J.* There has been but one case in this court on this act since the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificate person must be *adjudged* to be actually chargeable, otherwise he cannot be removed: And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole court. 2 Sess. C. 142. *Str.* 1158. *Burr. Sett. Cas.* 163.

But after all, it doth not appear, how it becomes necessary in the order of removal, to take any notice of the certificate at all, or to make any further use of it than as evidence to the justices of the settlement: And if it is not necessary to recite it, it is better to omit the same; because a misrecital, either in the date, or in the names of the persons, or in any other material part, will be fatal, for that then there will be no such certificate as is there recited, and the order must fall of course. And I do not see, why the form may not be much more plain and sim-

Must be adjudged chargeable,

ple by drawing the same very little varied from the common form of an order of removal of other persons having no certificate. It is true, where the persons are only *likely to be chargeable*, it is then requisite to set forth in the order, that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do set forth that they are chargeable, in that case it is not at all material whether they have a certificate or not; for in both cases alike, they are then equally removeable. And if so, then the form may be this, both for a certificate person, and for a person having no certificate, who is actually become chargeable :

Westmorland. **T**O *the churchwardens and overseers of the poor of the parish of Orton in the said county of Westmorland, and to the churchwardens and overseers of the poor of the parish of Penrith in the county of Cumberland, and to each and every of them.*

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton aforesaid in the said county of Westmorland, unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county of Westmorland, and one of us of the quorum, that John Thomson, Mary his wife, Thomas their son aged eight years, and Agnes their daughter aged four years, have come to inhabit in the said parish of Orton, not having gained a legal settlement there, and that the said John Thomson, Mary his wife, and Thomas and Agnes their children, are now chargeable to the said parish of Orton: We the said justices, upon due proof made thereof, as well upon the examination of the said John Thomson upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said John Thomson, Mary his wife, and Thomas and Agnes their children, is in the said parish of Penrith in the said county of Cumberland: We therefore require you the said churchwardens and overseers of the poor of the said parish of Orton, or some or one of you, to convey the said John Thomson, Mary his wife, and Thomas and Agnes their children, from and out of your said parish of Orton, to the said parish of Penrith, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of Penrith, to receive and provide for them as inhabitants

habitants of your parish. Given under our hands and seals the ——— day of ——— in the ——— year of the reign of his majesty king George the third.

It doth not appear what shall be done, if a certificate person, after having been removed, shall return with a new certificate; that is, whether or no the parish shall be obliged to receive him again, until he shall again become chargeable. It sometimes happeneth, that a certificate person is decoyed into acceptance of relief from the parish officers, in order that they may get rid of him. If a new certificate shall entitle him to return, this kind of practice may be frustrated. Upon a removal, the certificate is at an end. But the parish may grant him another. And there is no law which seemeth to give power to any parish to refuse him.—But this is a case not likely to happen frequently; because the parish granting the certificate must pay the charges of removing such certificate persons when chargeable, and of their maintenance in the mean time.

iii. Appeal against the order of removal.

In this place it may be proper to take notice of the case of *K. v. Yarpole, M. 31 G. 3.* where it was determined, That on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes, have not a right to vote. *Durnf. and East, 4 V. 71.*

Justices being interested.

All persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who shall do them justice according to the merits of their cause. 13 & 14 C. 2. c. 12. s. 2.

Power of appealing.

And by the 8 & 9 W. c. 30. *The appeal against any order of removal of any poor person, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed doth lie, and not elsewhere.* s. 6.

All persons who think themselves aggrieved] *E. 4 IV. K. and Hartfield.* Two justices removed *Nicholas Wells* from the parish of *Hartfield* to the parish of *Frampsfield*; from which order, *Wells* the party himself, and not the parish, appealed. It was objected, that the party himself cannot appeal, because the appeal is only given to the parish aggrieved: But by the whole court: The party may appeal as well as the parish. *Cartb. 222.*

The pauper himself may appeal.

T. 4 G. K. and Almonbury. An order of two justices was quashed at the sessions upon appeal, without saying, *at the appeal of the party aggrieved.* And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason, and that only, as *Pratt Ch. J.* declared, the order was confirmed. *Str.* 96.

To be the next sessions after the removal.

At the next general or quarter sessions] *E. 2 G. 2. K. and Norton.* Exception was taken to an order of sessions, for discharging an order of removal, because the justices order was dated *June 21*, and the sessions order was not till *Michaelmas* sessions following, so that *Midsummer* sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal: And for aught appears *Michaelmas* sessions might be the next sessions after the grievance. And so it was held in the case of *Milbrooke and St. John's in Southampton, M. 1 G.* To which the court agreed, and the sessions order was affirmed. *Str.* 831.

T. 11 W. K. and Langley. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court: The appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. *2 Salk. 605. Comb. 365.*

By next sessions is meant the next possible sessions.

And in the case of *K. and the justices of the East Riding of Yorkshire, E. 19 G. 3.* It was moved for a *mandamus* to receive an appeal against an order of removal on the following facts: The order of removal had been made by the two justices on the 22d of *September*, but the pauper was not removed till the 5th of *October.* *Hull*, the place to which the pauper had been removed from *Whitby*, is 60 miles from *Northallerton*, where the sessions began on the 6th of *October.* At which sessions no appeal was entered. And at the *Epiphany* sessions following, which began on the 12th of *January,* *Hull* offered an appeal, but the justices refused to hear it, thinking themselves bound by the words of the statute, which directs the appeal to be to the next sessions. On shewing cause it was insisted, that the succeeding sessions had no jurisdiction; that an appeal might have been entered at the *Michaelmas* sessions, on the second or third day, for that no notice is necessary in order to intitle the parties to enter their appeal, although if there has been no notice, or not reasonable notice, the justices

are

are bound to adjourn the hearing till the ensuing sessions. The court said, that by *next* sessions the statute meant the next *possible* sessions, and that here it was impossible for the appellants to lodge their appeal at the *Michaelmas* sessions. And the rule was made absolute for a *mandamus*. *Douglas*, 183.

T. 17 G. 3. K. and the justices of *Devonshire*. A *mandamus* had been moved for to the justices of *Devon*, to hear an appeal to an order of removal of *John Cook* and his wife and children, from *Witheridge* to *Paddington*, both in the county of *Devon*: The justices at the sessions had refused to enter into it, as one sessions had intervened since the removal: The facts were, that the order of removal was dated *October 21, 1776*; in *November* the pauper was removed; sometime afterwards it was agreed between the two parishes that the question should be decided by the opinion of *Heath* serjeant, provided such opinion was given on or before the 14th day of *January*, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel, than the examination of the pauper, which was, That he was born in the parish of *Witheridge*, and about the age of seven years was bound to *Richard Elworthy* of *Witheridge*, with whom he lived till 21, and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship: That the said *Elworthy* gave him a discharge under his own hand: That after different services he gained a settlement by hiring and service under *Robert Salter*, in the parish of *Paddington*, if he was so far discharged by the above transaction as to be capable of gaining a settlement by hiring and service.—On the 10th of *January* the opinion was given; and was, “ That if
“ the indenture of apprenticeship remained in the mas-
“ ter’s hands *uncancelled*, the apprenticeship still continued,
“ and the agreement was no dissolution thereof, but only
“ a licence to the apprentice to serve where he pleased.” On this day the officers of *Witheridge* told the officers of *Paddington*, that as the opinion was not decisive, they must enquire of the master what had become of the indenture. At the sessions on 15th, no appeal to the order of removal was entred. At the *Easter* sessions following, the parish of *Paddington* appealed, but the justices refused to enter into it, as not being in time.—*Buller* having early in the term moved for a *mandamus* on the ground, that under the agreement, the opinion in favour of *Paddington* was conclusive, and that *Paddington* had appealed in consequence of objections raised to this decision subse-

quent to the *Epiphany sessions*, and therefore the statutable limitation of appeal to the next sessions ought, during the time the parties were under the terms of compromise, to be suspended: On the last day of term, *Fanshaw* and *Miles* shewed cause, and having fully satisfied the court upon the fact, of the appeal having been prevented in consequence of the objection not having been raised previous to the *Epiphany sessions*:—By *L. Mansfield*: As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus*. Upon the point of law, I am of opinion, that if the indenture had not been destroyed, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in *Paddington*: The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture: Why, could the master after this, have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. But the opinion of the counsel was hypothetical only, and upon a state of facts at the time not settled and submitted to him by the parties; the case therefore might be considered as open to the interposition of the court: But the merits of the case appearing to be clearly against the party applying, the court, to prevent further litigation and expence, refused the rule: and on account of some misconduct with respect to the affidavits laid before the court by the prosecutors of the rule, directed that it should be discharged, with costs out of pocket. *Mandamus* denied. *Cal. Cas.* 32.

Where two days intervene between the removal and the next sessions, the appeal ought to be entered at that sessions.

M. 30 G. 3. K. v. justices of Herefordshire. A rule had been obtained on the defendants, to shew cause why a *mandamus* should not issue, commanding them to receive an appeal against an order of removal. The order was made on *Friday* the 18th of *April*; on the 19th the pauper was removed; and on the *Tuesday* following, the 22d, the *Easter* sessions was held at *Hereford*, 20 miles distant from the parish to which the pauper was removed; at which sessions it is the practice not to receive any appeal after the *Tuesday* morning. The parish not having appealed at those *Easter* sessions, the justices at the *Midsummer* sessions refused to receive the appeal, because not made at the next quarter sessions, according to the 13 & 14 G. 2. c. 12. s. 2. The foundation of this application was, that as the officers of the parish to which the pauper was removed, had not sufficient time to convene a meeting of the inhabitants,

ants, in order to take their opinion upon the subject whether there were any grounds for the appeal, the *Midsummer* sessions were the next possible sessions.—*L. Kenyon Ch. J.* The words of the act of parliament are very strong; and they require the appeal to be made at the sessions next after the grievance. Where indeed an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered by granting a *mandamus* to compel the justices at the following sessions to receive the appeal; because the words “next sessions” mean “the next possible sessions.” But this is a very different case; for there were two intervening days after the execution of the order, and before the *Easter* sessions; and if there was not sufficient time before those sessions, to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to 9 G. c. 7. s. 8. The other judges concurred. Rule discharged. *Durnf. & East, 3 V. 504.*

T. 11 W. K. and Langley. It was moved to quash an order of sessions, because the justices had adjourned the appeal from one sessions to another, and so the determination upon the appeal was not at the next quarter sessions. But by the court: The appeal must be lodged at the next quarter sessions, but when it is lodged, the justices may adjourn it. *2 Salk. 605. Comb. 365.* Appeal may adjourned.

E. 19 G. 3. K. and the justices of Gloucestershire. On a motion for a *mandamus* to compel the justices of the quarter sessions of *Gloucestershire*, to receive an appeal against an order of removal, it appeared from the affidavits, that the examination of the pauper was taken in *August*; the order of removal the 12th of *November* following; and the sessions, where the appeal was tendered, held on the 12th day of *January* in the ensuing year; that *no notice* of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready till it was too late to give such notice); that the court had been moved to receive the appeal, and adjourn the consideration of it till the following sessions, and had refused. The court was clearly of opinion, that the justices ought to have received the appeal; and the rule for a *mandamus* was made absolute. *Douglas, 182.*

But where the sessions itself is adjourned, the style of the sessions ought not to run at such a sessions held by adjournment, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment: As in the case of *2.* and the inhabitants of *Hinderclieve*: An order made at

Where the sessions is adjourned.

the general quarter sessions of the peace held by adjournment was quashed, because it did not appear that this was the next general quarter sessions, for it might be that the sessions was begun, and continued by adjournment before the order was made. 19 *Viner*, 356.

T. 10 G. 2. Heptonstall and Errendon. The sessions was said to be holden on such a day by adjournment, and it did not appear when the original sessions was holden. And the order was quashed for that cause. *Burr. Settl. Caf.* 88.

H. 20 G. 2. K. and Polstead. Appeal was made to the quarter sessions in *Suffolk*, held April 7, 1746, against an order of removal. The sessions was adjourned to April 9, at *Woodbridge*, where for want of a sufficient number of justices nothing could be done. April 11, a sessions is held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at *Woodbridge*. And of that opinion was the court; for the words in the 2 *H. 5. c. 4. and more often if need be.* were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The country must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. *Str.* 1263.

T. 22 & 23 G. 2. West Terrington and North Thoresby. The sessions was held at *Kirton*; and from thence adjourned to *Caisser*, at which place no sessions was held pursuant to the said adjournment. Afterwards a sessions was held at *Horncastle*; and the appeal was heard and determined there. By the court: The sessions at *Horncastle* could not take up the appeal, for want of jurisdiction. A quarter sessions must be holden four times in a year, as directed by statute; and it may be adjourned from time to time, and from place to place: But if it is once dropped, it cannot be resumed. *Burr. Settl. Caf.* 293.

Order confirmed at the sessions without hearing the appellant, quashed by court of B. R.

T. 15 G. 2. Roode and North Bradley. A person was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which *Roode* took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now *Roode* insisted that the order was good, as not being appealed from at the next quarter sessions: And as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court, they quashed the

the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them. *Str.* 1168.

For the county, division, or riding, from whence the removal was *E. 13 W. Watford and Wendover.* Two justices of *St. Albans* remove a poor person to *Wendover*. *Wendover* appeals to the sessions at *St. Albans*, where the order was confirmed. By the court: The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non iudice*. 2 Salk. 490.

Appeals against removals in towns corporate, must be to the county sessions.

And in the case of *Malden, M. 11 An.* By L. Ch. J. *Parker*; Where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justices sitting, who made the order. *Cases of S.* 10.

T. 8 G. 3. East Donyland and St. Giles's Colchester. Two justices for the borough of *Colchester* removed the pauper from *St. Giles's* in *Colchester* to *East Donyland* in *Essex*; and on appeal to the quarter sessions of the borough, the justices there confirm the order, and state a case specially upon the facts for the opinion of the court of king's bench. Upon arguing the matter there, it was observed, that the appeal ought to have been to the county sessions. Unto which it was answered, that the parties having acquiesced in the jurisdiction, and entred upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. But by the court: The borough sessions had no jurisdiction to make this order of confirmation; and therefore their opinion and their order are both nugatory. The appeal ought to have been to the quarter sessions of the county. As no such appeal has ever been made, the original order stands good as unappealed from. And accordingly the original order was confirmed. *Burr. Settl. Cas.* 592.

Notice of appeal. *No appeal from any order of removal shall be proceeded upon, unless reasonable notice be given by the churchwardens or overseers of the parish or place appealing, unto the churchwardens or overseers of the parish or place from which the removal shall be; the reasonableness of which notice shall be determined by the justices at the quarter sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally determine the same.* 9 G. c. 7. s. 8.

Sessions are bound to receive an appeal altho' no notice has been given.

Reasonable notice] *K. v. justices of Huntingdonshire, E. 23 G. 3.* Upon a removal of a pauper by two justices, the notice of appeal was served upon a *Sunday*: had the appellants deferred the service of their notice till another day, they would not have been in time, under the practice established in that court, to have given reasonable notice for the purpose of *trying the merits* of the appeal. The sessions (being of opinion that the party aggrieved was not at any rate or for any purpose intitled to appeal, unless the prescribed notice had previously been given; and also, that a service of a notice on a *Sunday* was not a legal service, and that in point of law there had not been any notice) refused to hear, adjourn, or enter the appeal. — *Mingay* had obtained a rule to shew cause why a mandamus should not issue, directing the justices to receive and hear the appeal; no cause being shewn, the rule was made absolute. *Cal. Caf.* 283.

Unless they think the appellants had sufficient time to have given notice and had neglected.

E. 29 G. 3. K. v. justices of the North riding of Yorkshire. This was a rule calling on the defendants to shew cause why a mandamus should not issue, directing them to receive, hear, and determine an appeal of the inhabitants of *Gate Helmsley* against an order of removal from *Strensall* to *Gate Helmsley* both in the said riding. The order was made on the 26th Nov. and executed on the 28th. It appeared that the appellants attended the next sessions held on the 13th Jan. and moved the court for leave to lodge the appeal and to respite the hearing thereof to the next sessions. The following entry was made by the sessions: "Forasmuch as it appears to this court that there has been sufficient time since the removals of the paupers for the appellants to give notice and come prepared to try this appeal at this sessions, and no cause shewn why they did not proceed accordingly, it is ordered, that the motion for lodging the same, and respiting the bearing to the next quarter sessions, be rejected." — *Law*, against the rule, insisted that the motion at the sessions was in effect a conditional motion to enter the appeal only in case the sessions would agree

to adjourn it. The clause in 9 G. c. 7. s. 8. which requires that the justices shall adjourn the appeal, unless reasonable notice has been given, was introduced in favour of the respondents; but it was not intended to permit the appellants to take advantage of their own laches in not giving reasonable notice, or to delay the hearing of the appeal to the prejudice of the respondents. Otherwise it would be enabling the appellants to take advantage of their own wrong; and it would enlarge the time of appealing to the second sessions. The magistrates at the sessions are, by the express words of the statute, to judge of the reasonableness of the time of notice, and here they have exercised their judgment.—*Chambre* in support of the rule. It was not discretionary in the justices at the sessions to permit the parties to appeal; the statute is compulsory on them; so also is the 9 G. c. 7. s. 8. compulsory as to adjourning the hearing, if reasonable notice be not given. This has been so decided in several cases. And though it was perhaps irregular to make the motion to respite the hearing before the appeal was entered; yet at any rate the justices were not warranted in refusing to receive the appeal.—But the court were of opinion, that the justices had not acted wrong; for the motion was in effect to adjourn the appeal. And it was evidently the intention of the parties not to enter the appeal unless the court would adjourn it. The justices are to judge of the reasonableness of the time; and in some counties they establish a rule regulating the time of notice. Here it appears that the order of removal was executed on the 28th of Nov. so that there was sufficient time for the appellants to give notice, and to come prepared to try it; and the justices, who are the judges of this, thought so.—Rule discharged. *Durnf. and East, 1 V. 150.*

Although it is not expressed in the act, that this notice shall be in writing; but the court will better judge of the reasonableness of it, if it shall be in writing: And it may be thus:

TO the churchwardens and overseers of the poor of the parish of _____ in the county of _____.

This is to give notice to you and every of you, that we the churchwardens and overseers of the poor of the parish of _____ in the county of _____ do intend at the next quarter sessions of the peace to be holden for the said county of _____ to commence and prosecute an appeal against an order of J. P. and K. P. esquires, two of his majesty's justices of the peace of the said county of _____ for and concerning the removal of _____

to our said parish of ———. Witness our hands this ——— day of ———.

A. B. }
C. D. } Churchwardens.
E. F. }
G. H. } Overseers of the
poor.

Order not appealed against, is final.

H. 12 An. Malendine and Hunsdon. Two justices by an order send some poor persons to *Hunsdon*. Two justices there by an order send them back again. By the court: They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it. *Fol. 273.*

T. 12 W. Chalbury and Chipping Farringdon. A person was removed by order of two justices from a parish in *Warwickshire* to *Chalbury* in *Oxfordshire*, from thence by order of two justices to *Chipping Farringdon* in *Berkshire*: It was objected, That *Chalbury* ought to have appealed, and got the order upon them discharged. Which *Holt Ch. J.* agreed: For sending the man to another place, is falsifying the first order, which cannot be done, but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed: *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was naught. *2 Salk. 488.*

E. 5 G. 2. K. and Northfeatherston. Two justices made an order, by which they removed a man, his wife and four children, naming them, to *Featherston*; and there was no appeal. Afterwards *Featherston* finds out that this woman was not the wife, for that the man, though married to her, was married before to another woman, and consequently the second marriage totally void: And they remove the woman by her maiden name to *Horsington*, and the four children thither also as bastards. *Horsington* appeals; and the sessions upon hearing the matter state the case specially, that this woman and the four children were the same with the woman and children removed by the first order, and gave judgment that the first order was conclusive, and thereupon quashed the said second order. And by the court: They have slipped their opportunity, and the first order not appealed against is conclusive. *1 Sess. C. 154.*

M. 16 G. 2. Nympsfield and Woodchester. In 1731, a man and his wife were removed from *Nympsfield* to *Woodchester*,

chester, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester* together with the father. And upon an appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion, that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: For the marriage being established by the first order, the settlement of the children (which is derivative) follows of course; and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. *Str.* 1172. *Burr. Settl. Cas.* 191.

T. 21 & 22 G. 2. *Sutton St. Nicholas* and *Leverington*. *John Buntin*, the pauper, was removed from *Sutton St. Mary's* to *Leverington*. *Leverington* did not appeal; and yet the sessions confirmed this original order, though unappealed from. Four months after the first order, a second original order was made, to remove the pauper from *Leverington* to *Sutton St. Nicholas*. Which second original order was confirmed at the sessions upon appeal. By the court: The second original order, and the order of sessions confirming it, were quashed; and the first original order was confirmed. For *Leverington* was bound by the first original order unappealed from, unless some subsequent settlement appears. And four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions, confirming the first original order, was quashed, as being a voluntary and extrajudicial act of the sessions, to confirm an order which was not complained of.—And the like was done in the case of *Godalming* and *St. Michael's* in *Winchester*, in the 13 G. 2. The order of sessions, which confirmed the first original order, was quashed, because it was not made upon appeal. For which reason, it was agreed by the court and counsel to be void. *Burr. Settl. Cas.* 276.

H. 6 G. 3. *Silchester* and *Enborn*. Two justices remove *George Wise* and *Jane* his wife from *Newbury* to *Enborn*, and their order was not appealed against. Afterwards, the parish of *Enborn*, finding that *Jane* was not the wife of

of *George Wise*, two justices remove her, by the name of *Jane Moor* a single woman, from *Enbern* to *Silchester*. *Silchester* appeals. And on hearing the appeal, it was proved, that the said *Jane* never was married to the said *George Wise*. And therefore the sessions affirmed this order of the justices. But by the court : The sessions order must be quashed. They said, that whatever the hardship might be in this particular case, or how doubtful soever this question might be if it were *res integra* ; yet its being fully settled, was a reason for them not to depart from it now : For that *stare decisis* was always a good rule ; and never more so, than in cases of settlements of paupers, where it would make the utmost confusion if they should overturn settled determinations, which the justices all over *England* had been used to look upon as the rules of their conduct in similar cases. If she was not his wife, it might have been controverted. But, as they have neglected to appeal, when they had a proper opportunity to shew it, they are estopped to say so now. *Burr. Sett. Cas.* 551.

T. 28 G. 3. *K. v. Kenilworth*. *Thomas Byfield*, his wife and children, were removed from *Birmingham* to *Kenilworth* in *Warwickshire*. The sessions confirmed the order, and stated the following case : That the pauper was born and settled in *Kenilworth*. On 10th *May* 1765, he was hired for a year to *J. Chatterton* of *Birmingham*, and that day entered into his said service, and continued in the same in *Birmingham* until 1st of *April* 1766, when he was taken up on a charge of bastardy, and married the next day. His master did not make any complaint against him, nor discharge him from his said service. On the 3d of the said *April*, he was removed from *Birmingham* to *Kenilworth*, where he remained until the 7th of *April*, and then returned back to *Birmingham* into his said master's service, who willingly received him again, and he continued in his said service till the end of the year, and received his full year's wages. The order of removal was not appealed against. This case was argued by *Bearcroft* and *Sylvestre* in support of the order, and *Wilkes* and *Shaw* contra.—*Buller J.* There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against is conclusive against all the world ; and this is so clearly and universally established that it ought never to be impeached. At the same time, the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. Then the question

tion here is, Whether the pauper gained any settlement in *Birmingham* subsequent to the order of removal? Now, in this case, he did no act by which he could gain a settlement in *Birmingham* after the order of removal. The circumstances of the pauper's having been apprehended on a charge of bastardy, and of his marriage, I lay entirely out of the question; for it was competent to the master to receive him again after he was discharged out of custody if he pleased; and the servant might have served his master after he was married as well as before. But what I rely on is this, that after the order of removal unappealed from, the pauper could not legally return to the parish from whence he had been removed; it would have been a crime in him so to do, and if he had been indicted for such a disobedience of the order, it would have been no defence to him to have urged that he returned for the purpose of completing his contract. The order of removal put an end to the service, and if he could not return without committing a crime, he could not be liable to an action by the master for not completing the contract. There is a great difference whether the party is disabled by his own act, or by the act of law from performing his contract; he is answerable for the former, but if the law intervenes, and says he shall not complete the contract, it puts an end to it. Now, in this case, the pauper returned after the order of removal to *Birmingham*, where he served a month, but that could not gain him a settlement there, for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself.—*Grose J.* I doubt whether the party was liable to be removed; but there having been an order of removal unappealed from, it is decisive; and he has done no subsequent act to gain a settlement. Rule discharged. *Cas. by Durnf. and East, 2 V. 598.*

But in the case of *K. v. Swalcliffe, H. 23 G. 3. Thomas Hawkins and Mary his wife* were removed from the parish of *Swalcliffe* to the parish of *Stourton*. The sessions quashed the order, and stated specially: That the pauper was born at *Swalcliffe*; that in *Jan. 1782*, he was removed from *Swalcliffe* to *Ascott*, a large, populous village, part of the parish of *Whitchford*, and maintaining its poor in common with *Whitchford*; *Ascott* did not appeal, and *Swalcliffe* filed the order at the *Epiphany* sessions 1782, for safe custody. The pauper and his wife coming again into *Swalcliffe*, and not having acquired any subsequent settlement, *Swalcliffe* obtained the first mentioned order, and sent the paupers to *Stourton*, where he had gained a settlement by hiring and service.—It was contended, that the order of removal to

Except where the removal is to a place that does not maintain its own poor separate.

Ascott

Ascott being unappealed from, was, as to the pauper's settlement in the parish of *Whitchford* as including *Ascott*, a conclusive judgment. In reply, it was insisted, that though an order of removal unappealed from, is conclusive when directed to a place to which a removal can legally be made, and where there is to be found some person legally authorized to appeal; yet that here were no officers to act: That to omit to do a thing which was impossible to be done, could not be conclusive upon any one: That *Whitchford* could not in this case appeal, for not being parties they were not entitled to be heard.—By *L. Mansfield*: The removal to *Ascott* was in truth no removal at all, there was no reason for an appeal; it was a mere nullity. Order of sessions quashed, and the order of the two justices affirmed. *Cald. Cas.* 248.

An order may be deserted and given up by consent, without appealing.

H. 10 G. 3. Llanrhydd and Denbigh. Two justices (Mr. *Middleton* and Mr. *Jones*) made an order of removal, in *May* 1768, from *Llanrhydd* to *Ruthin*, and the paupers were delivered to the officers of *Ruthin*, who maintained them for a while; and for some time after, they were maintained at the joint expence of both parishes. And notice of appeal against the said order being served on the officers of *Llanrhydd*, by the officers of *Ruthin*, on the morning of the quarter sessions, previous to the filing of the said appeal, the officers of *Llanrhydd* consented to take the paupers back to their custody, without giving the parishioners of *Ruthin* the trouble of appealing. Afterwards, in *January* 1769, two justices (Mr. *Yale* and Mr. *Price*) removed the same paupers from *Llanrhydd* to *Denbigh*. And upon appeal, their settlement was found to be at *Denbigh*. But it appearing in evidence on the behalf of the parish of *Denbigh*, that the former order made by Mr. *Middleton* and Mr. *Jones* for removing them to *Ruthin* had not been appealed against, the court were of opinion, that the said order of removal from *Llanrhydd* to *Denbigh* ought to be quashed, and was quashed accordingly.—It was moved to quash the order of sessions; and urged, that though the principle upon which they grounded their opinion is in general right, namely, that an order of removal submitted to and not appealed from is conclusive upon the non-appealing parish, as against all the world; yet this general rule is to be understood to relate only to a subsisting order, but not to a deserted one: and therefore the sessions have mistaken in applying this general principle to the particular case of the present order (made by Mr. *Middleton* and Mr. *Jones*) for removing the paupers from *Llanrhydd* to *Ruthin*;

Ruthin; which, being found to be a wrong one, was by consent of both parties concerned in it, abandoned and deserted, and the paupers taken back again by the parish in whose favour it was made; and was consequently at an end, and must be considered as if it never had existed.—On the other hand it was insisted, that it was not in the power of private persons to put an end to the order for removing these paupers to *Ruthin*, whilst an appeal was thus going on against it. The order has removed them to *Ruthin*; and *Ruthin* has not appealed. Consequently *Ruthin* is concluded, as against all other parishes, to dispute their belonging to *Ruthin*.—By *L. Mansfield*: That order was made in favour of *Llanrhydd*; and *Llanrhydd* gave it up, and consented to take the paupers back, without giving *Ruthin* the trouble of appealing against it. May not a party give up a judgment intended for his own benefit?—And the order of sessions was quashed; and the order for removing the paupers from *Llanrhydd* to *Denbigh* affirmed. *Burr. Settl. Cas.* 658.

T. 26 G. 3. Southawram and Northawram. Elizabeth Booth widow, and her three children, were removed from *Southawram* to *Northawram*. On the appeal the sessions stated, that it appeared by the evidence of *William Booth* (father of *Jeremiah* late husband of the pauper) that the said *William* and *Jeremiah* were born and settled at *Halifax*, but it did not appear that *Jeremiah* had done any act to gain a settlement. That on 6th April 1774, the said *William Booth* and his wife, but not any of their children, were removed from *Halifax* to *Northawram*, who received the two paupers and did not appeal. That *Jeremiah* and *Elizabeth* the pauper were married some years before the removal of *William* and his wife, and had those three children; and *Jeremiah*, from the time of his marriage until his death, lived at *Halifax*, in a house he rented, independent of his father, and was not removed by, or mentioned in the order, nor was then any part of his family. Thereupon the sessions discharged the order, subject to the opinion of this court; Whether the settlement of *Elizabeth Booth* and the said three children was by inference to be deemed at *Halifax*, or to follow the settlement of the father to *Northawram*?—By the court: The order of removal unappealed from is conclusive as to the father and mother, but not as to the son, because he is not mentioned in it. And the sessions have expressly found, that the son was settled at *Halifax*.—Original order quashed; and order of sessions confirmed. *Cas. by Durnf. and East*, 353.

Order not appealed against, is only conclusive as to those who are mentioned in it and removed.

Sessions to proceed upon the merits.

Defects of form to be amended.

Court equally divided on the appeal.

By the aforesaid statute of the 13 & 14 C. 2. it is expressed, that the justices upon the appeal, shall do to the parties justice according to the merits of their cause.

And by the 5 G. 2. c. 19. *On all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause defects of form to be rectified and amended, without any cost to the party, and after such amendment shall proceed to hear the truth and merits of the cause. s. 2.*

T. 8 & 9 G. 2. K. and the justices of *Westmorland*. Order of two justices of the borough, for removing a poor family. Appeal to the sessions of the county, at which only four justices were present, who were equally divided; so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be supported. Sir *Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quashed, for that it doth not appear, that the appeal was before them; and that, for aught appears, the *mandamus* requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, since the appeal being lodged at a former sessions, was not continued over to the subsequent sessions, and therefore was by law gone. Mr. *Robinson* on the other side said, that it was not usual in such cases to return the continuances; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till by the coming of more justices, the matter might have been determined. By L. *Hardwicke* Ch. J. The question is, Whether there is a possibility of the justices proceeding in this appeal? He thought, if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions. He ordered the case to stand over, and recommended it to Sir *Thomas Abney* to advise his clients to proceed on the appeal, or return the continuances; and seemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. 2 Sess. C. 193. But the pauper in the mean time running away, nothing further was done.

The justices may alter their order during the same sessions.

M. 3 An. St. Andrew's and St. Clement's Danes. The sessions made an order, on an appeal from an order of removal,

removal, and afterwards the same sessions vacated it by a subsequent order; and a *certiorari* being brought, both orders of sessions were returned thereon. By *Holt Ch. J.* The sessions is all as one day, and the justices may alter their judgment at any time, whilst it continues; but they should not have returned the vacated order, but only the latter; for the effect of the court's setting aside the first order is, that it ceaseth to be an order, and consequently ought not to be returned as an order vacated by another order, but it should have been annulled and made nothing. 2 *Salk.* 494. 606.

And for the more effectual preventing of vexatious removals and frivolous appeals, the justices in sessions upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officers to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such appeal), shall at the same sessions order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just; to be paid by the churchwardens, overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs shall live out of the jurisdiction of the said court, any justice where such person shall inhabit, shall on request to him made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness on oath, by his warrant cause the same to be levied by distress; and if no such distress can be had, shall commit such person to the common gaol, there to remain by the space of 20 days. 8 & 9 W. c. 30. s. 3.

Costs on the appeal.

M. 5 G. 2. K. and the justices of the county of *Nottingham*. A *mandamus* was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the writ of *mandamus*. *Nelf. Justice, tit. Poor.*

E. 16 G. 2. Stansfield and Spotland. The sessions adjourned the appeal to the next quarter sessions, and ordered four guineas costs to the appellants: Which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it. *Burr. Sett. Cas.* 205.

For the preventing of vexatious removals, if the justices shall at their quarter sessions, upon an appeal before them there

Maintenance to be reimbursed.

had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person was unduly removed, they shall, at the same quarter sessions, order and award to such appellant, so much money, as shall appear to the said justices to have been reasonably paid by the parish or other place on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal are to be recovered by the statute of the 8 & 9 W. 3 G. c. 7. s. 9.

E. 3 G. 2. St. Mary's Nottingham and Kirklington. Motion for a mandamus to the justices of the town and county of Nottingham, commanding them to allow the parish of Kirklington the expence and charges their officers had been put to, in keeping a poor person from the time of his removal, till the order was discharged by the sessions upon appeal. And a mandamus was granted. 2 Sess. C. 67.

M. 16 G. 2. Great Chart and Kennington. The order of the two justices was quashed by the sessions for insufficiency; and the sessions thereupon order, that the costs of maintaining the pauper, since the time of his removal, shall abide the event of the cause, in case the said parish of Great Chart shall think proper by another order to remove the pauper to the said parish of Kennington. Which order, as to the costs, was quashed by the court of king's bench; because the sessions must either give or not give costs at the time when they make their order. *Burr. Settl. Cas. 194.*

Order confirmed
upon the appeal
is final,

M. 13 W. Mynion and Stony Stratford. By Holt Ch. J. and the court: If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties; for it is an adjudication that this is the place of the party's last legal settlement. 2 Salk. 527.

M. 10 W. Harrow and Riselip. A person comes into Harrow, and being likely to become chargeable, was removed to Riselip. Riselip appealed; and upon the appeal he was adjudged to be settled at Riselip. Afterwards Riselip discovered, that Hendon was the place of his last legal settlement, and sent him thither; and the question was, Whether after the adjudication upon the appeal, Riselip was not estopped against all the world, to say, that Riselip was not the place of his last legal settlement. By Holt Ch. J. Riselip is estopped to say otherwise; for if Riselip had not been the very place of his last legal settlement, the justices

justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Riseflip*. And now this is in effect the same question again, namely, whether he belongs to *Riseflip*? Which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at *Riseflip*. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things. 2 *Salk.* 524. 3 *Salk.* 261.

M. 6 G. Little Bitbam and Somerby. A person is sent by order of two justices to *Somerby*, as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. By the court: An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and therefore no new settlement appearing, the order of removal from *Somerby* must be quashed. *Str.* 232.

H. 19 W. St. Michael's Bedingham and Kingston Bowsey. Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal. 2 *Salk.* 486.

Order quashed on the merits, conclusive only between the parties.

T. 9 G. Fosson and Carleton. Two justices send a poor person from *Fosson* to *Carleton*. On appeal the order is quashed; and at three months end, two justices, without shewing any new settlement since the last order, make a new order to remove him from *Fosson* to *Carleton* a second time. But by the court: The last order must be quashed: The case of *Barrow and Ingolfby*, *E. 11 An.* was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to shew a new settlement. *Str.* 567.

E. 29 G. 2. Bradenham and Thame. Two justices by order of removal, dated *December 30, 1754*, send *John Saunders* and *Sarah* his wife and four children from *Thame* to *Bradenham*, as the place of their last legal settlement. *Bradenham* appealed to the next (*Epiphany*) sessions, and the order of two justices was discharged. Afterwards on *March 28, 1755*, two justices make a new order, for removing *Sarah* the wife of *John Saunders* and her children from *Thame* to *Bradenham*. Upon appeal, the sessions adjudge the last settlement of *Sarah Saunders* and her children to be in the parish of *Bradenham*, and confirm the order. On removal of these four orders into the court of

king's bench, it was moved to quash these two last orders ; and argued, that the order of reversal was conclusive between the two parishes, that so there might be an end of things ; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. By the court : The last orders must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it must be conclusive. But it is said, there are cases where there may be a new removal, as supposing there had been one or two years distance between the two orders of removal, or a sufficient time to gain a new settlement ; yet the court will not intend one gained, unless it is stated in the order. And in this case there is no such time. *Burr. Settl. Cas.* 394.

E. 19 G. 2. Osgathorpe and Diseworth. A person was removed by order of two justices from *Diseworth* to *Osgathorpe* ; which order on appeal was discharged. He was by a second order sent from *Diseworth* to *Osgathorpe* as a certificate man ; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so ; and the sessions were of opinion, that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties. But by the court : So it would be if the special matter did not appear ; a certificated person cannot be sent back, until he is actually a charge ; a removal before is premature ; The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed. *Sir.* 1257.

Order confirmed on appeal is conclusive on all the world, but if quashed, is conclusive only between the parties.

H. 8 G. 2. Cirencester and Coln St. Aldwin's. The pauper was removed from *Minety* to *Coln St. Aldwin's* ; and on appeal the order was reversed. Afterwards he was removed from *Cirencester* to *Coln St. Aldwin's*. The former removal was on complaint of the parish of *Minety* ; the latter on complaint of the parish of *Cirencester* : The parish to which the pauper was sent on both complaints, was *Coln St. Aldwin's*. On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive. By the court : An order confirmed binds all the world ; but when discharged, it is binding only between the parties concerned. For the discharge of the order

der doth not determine where the pauper is settled; but only, that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him. And *L. Hardwicke* Ch. J. said, he took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes: And this distinction is reasonable; because a third parish may be able to give better evidence than the other could. And this latter order of sessions was quashed. *Burr. Settl. Caf. 17.*

E. 30 G. 2. Bentley and Baxterley. The pauper was first removed from *Baxterley* to *Stourbridge*, which order, on appeal, was discharged. Then *Baxterley* removed to *Bentley*, and *Bentley*, upon appeal, offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was anterior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—By *L. Mansfield* Ch. J. and the court: An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction, between all proper parties. For the parishes and the pauper were the only proper parties. It is establishing one certain fact, which when ascertained regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such a one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged, is only a kind of negative finding, that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, What is so? There is all the reason the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this; “Upon the case made out to us, the pauper is not settled at *Stourbridge* ;” but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence, which another parish could not produce.—And the orders were quashed. *Burr. Settl. Caf. 425.*

Order quashed
for form, not
conclusive be-
tween the par-
ties.
Superintend-
ency of the court
of King's bench.

An order of two justices, if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Foley*, 276.

It was moved for setting aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. 1 *Ventr.* 30.

M. 9 An. South Cadbury and Braddon. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say, whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. But by the court: The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears naught. 2 *Salk.* 607.

So that the case is this: If the sessions by their order do barely affirm or quash the order of two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is *confirmed* by the sessions, the court will intend it was confirmed upon the merits: If it is *good as to form*, and *quashed* by the sessions, the court will intend it was quashed upon the merits: If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous: If it is *bad as to form*, and is *quashed* by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but set forth the reasons of their said order, and state the case specially thereupon; then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises

arises upon those facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions, which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quash or confirm the order of sessions as they see cause.

If the justices will not state the case specially, tho' it may be a blameable conduct in them in some instances, yet there are no means to compel them. As in the case of *Oulton and Wells*, M. 9 G. 2. Two justices removed three children of *Francis Ailmer* from *Wells* to *Oulton*; and the sessions upon appeal confirm their order, generally, without stating any special case. The counsel for *Oulton* excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of the exceptions was, That the said children, after their father's death, went with their mother to an estate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions, together with the original order of two justices. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. But by *L. Hardwicke* Ch. J. To what purpose should we make a rule to shew cause why this order of sessions should not be quashed? For I do not see, that we can ever make such a rule absolute; because this that is alledged to have been the real state of the case, doth not appear to us to be the fact. And how can we take it for granted, that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law. And *Mr. J. Page* said, he never knew an instance, that this court could force the justices, against their will, to state a special case. *Burr. Sett. Cas.* 64.

Sessions are not
compellable
to state cases.

And in the case of *Preston upon the bill* and *Daresbury*, E. 9 G. 2. Two justices made an order for removal of the pauper from *Daresbury* to *Preston*. And upon appeal
to

to the sessions, they confirmed the said order, generally; not caring to state any special case in their order. A motion was made to quash these orders; which came before the court upon a bill of exceptions, containing a special state of the case. On shewing cause, the single question was, Whether a bill of exceptions would lie in this case to the court of quarter sessions. By *L. Hardwicke* Ch. J. This is a case of great consequence. And there may be very great inconveniences on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner, contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (tho' requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniences arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may by such means be rendered dilatory, expensive, and burthenfome. And after a full hearing of the arguments on both sides, the court were unanimously of opinion, that a bill of exceptions doth not lie to the quarter sessions. *Burr. Settl. Cas. 77.*

Where a case is insufficiently stated, it may be sent back to the sessions.

Where the case is insufficiently stated, the court of king's bench frequently send it back to the sessions to be re-stated; who may hear fresh evidence, or re-state the same upon the former evidence, according to the nature and circumstances of each case. In the case of *Sherfield and Bray, E. 11 G. 3.* which was on the point of hiring for a year, the sessions had stated the evidence only, and not the fact of hiring. It was sent back to the sessions to be re-stated: and the majority of the justices there refused to re-examine the pauper, or to hear any further evidence; although three of the justices then on the bench had not been present at the appeal. It was moved to send it again to the sessions, to be a second time re-stated. And two cases were cited; one of them was *K. and Page, M. 1764*, where the question was, Whether a man was occupier of tithes, or only bailiff? The sessions was ordered to hear further evidence; and did so. The other case was, *K. and Hitcham, H. 33 G. 2.* where the sessions did re-examine the fact, Whether the pauper was a single or a married man, when hired?—Unto this it was answered, that these two cases were not like the present case. In both of them it was necessary to hear the evidence over again:

again: In the present case, it was not necessary; the matter was fully examined into before; the sessions had stated the evidence, without drawing the conclusion; the court thought the sessions ought to have drawn the conclusion and sent it back to them for that purpose only. They have now done so. They have stated a hiring for a year. And this court have now received all the information they wanted.—By *L. Mansfield*: Whether the justices at the second sessions were or were not obliged to hear new evidence, is a question that must depend upon the nature of the case. In *Page's* case, new evidence was necessary. But in the present case, it was sent back only to cure an informality. Here, the pauper had before given a full account of the agreement. Therefore the justices at this second sessions did very right, in not examining him over again. *Burr. Settl. Cas.* 682.

AFTER the determination of an appeal at the sessions, if the order is reversed, there is a difficulty sometimes in getting the paupers back again to the place from whence they were unlawfully removed. If they will not, or are not able to return of themselves, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. As in the case of *Honiton* and *South Beverton*, *M. 8 W.* Two justices remove a man from *Honiton* in the county of *Devon*, to *South Beverton* in the county of *Somerset*. They appeal to the sessions in *Devon*, where the order is reversed. Now two justices in the county of *Somerset* may by order remove him to *Honiton* again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of sessions. *Comb.* 401.

What is to be done with the pauper when the order of removal is quashed.

IV. Of the poor rate, and other helps towards their relief.

- i. Of the poor rate.
- ii. Taxing others in aid.
- iii. How far parents and children are liable to maintain each other.

i. Of the poor rate.

It is curious to a contemplative person, to investigate by what steps and degrees the compulsory maintenance became

came established in this kingdom. By a statute made in the 12 R. 2. c. 7. the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the *hundred*; within which districts they were *allowed* to beg.—By the 22 H. 8. c. 12. the justices were to distribute themselves into several *divisions*; within which divisions respectively they might *license* persons to beg.—By the 27 H. 8. c. 25. the several *hundreds*, *towns corporate*, *parishes*, or *hamlets*, were required to *sustain* the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging; on pain that every person making default should forfeit 20 s. a month. And the churchwardens, or other substantial inhabitants, were to make collections for them with boxes on *Sundays*, and otherwise by their discretions. And the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful.—By the 1 Ed. 6. c. 3. houses were to be provided for them by the devotion of good people, and *materials* to set them on *work*: And the minister, after the *gospel* every *Sunday*, was specially to exhort the parishioners to a liberal contribution.—By the 5 & 6 Ed. 6. c. 2. the collectors of the poor, on a certain *Sunday* in every year, immediately after divine service, were to *take down in writing*, what every person was willing to give weekly for the ensuing year; and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the *bishop* of the diocese; and the bishop was to send for him, to induce and persuade him by charitable ways and means, and so according to his discretion to *take order for the reformation thereof*.—By the 5 El. c. 3. If he stood out against the bishop's exhortation, the bishop was to certify the same to the *justices* in sessions, and *bind him over* to appear there: And the justices at the said sessions were again gently to move and persuade him; and finally, if he would not be persuaded, then they were to *assess* him what they thought reasonable towards the relief of the poor; and in case of refusal, were to commit him till paid.—By the 14 El. c. 5. power was given to the justices to lay a *general assessment*. And this hath continued ever since. For the statute of the 43 El. c. 2. is only a re-enacting of former provisions, with very little alteration; as followeth: viz.

Making a rate.

The churchwardens and overseers of the poor of every parish, or the greater part of them, shall raise weekly or otherwise

wife (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work; and also competent sums for the necessary relief of the lame, impotent, old, blind, and such other among them being poor as are not able to work, and also for the putting out poor children apprentices. 43 El. c. 2. s. 1.

The churchwardens and overseers] *H. 2 An. Tawney's case.* The concurrence of the inhabitants in making a rate, is not at all necessary; for by these words the churchwardens and overseers may make one without them. *L. Raym. 1013. 2 Salk. 531.*

To be made by the churchwardens and overseers.

Shall raise] *H. 2 G. 2. K. and Barnstable.* If the overseers refuse to make a rate, the court of king's bench will grant a *mandamus* to compel them. But the court will not grant a *mandamus* to make an equal rate; because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. *1 Barnard. 137.*

Overseers are compellable to make a rate.

In the case of *K. and Brograve, M. 10 G. 3.* It was moved to set aside an order of sessions confirming a rate allowed by two justices, whereby the occupiers of land were assessed at three-fourths of the yearly value, and the occupiers of houses at only one-half, which upon the face of it appeared to be unequal. But by the court: Here is no apparent inequality, and we are not to presume it. There may be reason to make a difference between lands and houses. For there are several charges incident to houses which do not fall upon lands, to lessen their yearly value. *Burr. Mansf. 2491.*

The court will not presume a rate unequal altho' houses and lands are not rated alike.

E. 20 G. 3. K. v. Butler & al. It was objected against a rate made by the parish officers of *Swannage*, alias *Sandwich*, and confirmed by the sessions, that no difference was made in assessing tenements and farms consisting of land, and cottages or dwelling houses; whereas the clear income of the former was as 1d. in the pound, to three farthings in the pound of the latter; and that it had been the custom to rate them nearly in that proportion until the year 1778, when at a publick vestry, both lands and houses were rated at 1d. in the pound, and the same way of rating hath since continued.—By *L. Mansfield*: The question before the court is, Does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the court will presume it equal. Circumstances

circumstances may vary the value of different estates; and if this plainly appear, then what is said in *K. v. Brograve* applies: but you take advantage of an *obiter* saying of the court in that case, when the true legal ground of the authority is decisive against you. Rate affirmed. *Cal. Caf.* 93.

H. 21 G. 3. K. v. Sandwich alias Swannage. A poor rate was made charging tenements and farms at 1d. in the pound, and cottages and dwelling houses at three farthings in the pound. The sessions on appeal quash the rate, and state the following case: That from the year 1735 to the year 1776 a constant distinction had been observed; houses having been rated at a less proportion to their rents than the lands were; that in this parish the lands were burthened with no particular charges, but both were equally subject to the usual repairs and taxes generally incident to each respectively.—In support of the rate it was urged; that it had been made in consequence of what seemed to be the opinion of the court last year, when the same question came before them from this same parish; and also in consideration of the custom which had been revived in making the present rate, and which the court had before said they could not compel the parish to make, but which they intimated was reasonable. And also, that the rate ought not to have been altogether quashed, but amended, by adding to the sums assessed upon the houses.—It was answered, that in this parish there were circumstances which well warranted an equal assessment on each species of property; that nine-tenths of the burthen of the poor arose from the houses; and that the rate could not be amended, as the objection went to every name in the rate.—By *L. Mansfield*: The court has certainly laid down no general rule as to the mode of assessing houses and land: they could not either one way or the other; the proportion must ever depend upon local circumstances; and if nine-tenths of the burthen arise from the houses, such circumstances were sufficient to influence the sessions in adjusting that proportion. The objection unavoidably goes to the whole rate, for it is throughout made by a rule and proportion which the justices thought unequal, and therefore they could do nothing but quash the whole. Order of sessions, quashing the rate, affirmed. *Cal. Caf.* 105.

A rate cannot be made to reimburse money laid out by overseers after they are out of office.

Weekly or otherwise] In *Tawney's* case aforesaid, *Tawney* being overseer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the justices before the end of the year; by which means he lost the opportunity

portunity of making a rate to reimburse himself. Upon this he applied to the court of king's bench for a *mandamus* to the churchwardens and overseers to make a rate to reimburse him. It was argued against the *mandamus*, that there can be no such charge, neither by the common law nor by the statute. And by *Holt* Ch. J. We cannot order the parish or overseers by a *mandamus* to make a rate to raise money to reimburse an overseer, but only to raise money for the relief of the poor; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he has it; if he does, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he needed not to have done it. He hath not pursued the means the statute gave him, and we cannot relieve him. And by the whole court: The *mandamus* lies not. 2 *Salk.* 531.

E. 19 G. 3. K. and Wavell. On a rule to shew cause, why a rate for the relief of the poor of the parish of *Effingham* in the county of *Surrey*, and an order of sessions confirming the rate, should not be quashed, the sessions had refused to state a special case; but the counsel for the appellants being of opinion that the rate would appear to be bad from the title of it, they removed it by *certiorari*, and obtained the present rule. The title of the rate was as follows: "*Surrey* to wit. An assessment on all and every "the occupiers of lands and houses in the parish of *Effingham*, for the necessary relief of the poor, and towards "payment of money borrowed for repairing and rebuilding the "workhouse." In support of the rate, it was contended, That the title of the rate would undoubtedly have been good, if it had been only "An assessment for relief of "the poor," and that the acts and orders of magistrates (except convictions) are intitled to every intendment from the court that can support them, and therefore that the court would intend the whole money to have been assessed for the first purpose expressed in the title (if it should be thought that the other was not within the statute), and would reject the additional words as surplusage: That if the present objection was founded in law, the proper method of getting at it would have been, by an appeal from the allowance of the overseers accounts. However, this purpose, of building or repairing a workhouse, was manifestly within the spirit of the statute, since it would be in vain to provide for the sustenance of the poor, without being able to furnish them with a lodging. On the other side, it was

Rate cannot be made to repay money borrowed for building or repairing work-houses.

said

said to be a general rule without exception, that the parish officers cannot borrow money for any purpose whatever. The inconvenience of vesting such an authority in them was manifest; for new inhabitants might be called upon to pay money borrowed before they became parishioners, and for purposes from which they could derive no benefit.—*L. Mansfield* was absent. *Willes J.* Can we reject as surplusage what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney's* case is in point. And as to an appeal against the overseer's accounts, is a parishioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported. *Ashburys J.* of the same opinion. *Buller J.* This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's* case goes that length; for it is not confined to the *mandamus*. If it were otherwise, the inconvenience might be very great.—And the rule for quashing was made absolute. *Douglas*, 111.

Persons removing shall be rated in proportion to the time of their respective occupations.

And by the 17 G. 2. c. 38. Where persons shall come into or occupy any premises, out of which any other person assessed shall be removed, or which at the time of making such rate was unoccupied; every person so removing from, or coming into, or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, under the like penalty of distress, as if such person so removing had not removed, or the person coming in or occupying had been originally assessed in such rate; which proportion, in case of dispute, shall be ascertained by two justices. *s. 12.*

The owner of a house occupying a part thereof only.

In the case of *K. v. St. Mary the Less, Durham*, the reverend *H. Egerton* appealed against a poor rate for being over rated; and moved that he might be rated for two rooms only, part of his dwelling house, and the garden behind it, as occupied by him, together of the yearly value of 5*l.* instead of 24*l.* at which the house, with the stable and garden, were charged. The sessions allowed the appeal, and the rate was amended. And they also stated: That the former occupier of the premises in question had been rated at 24*l.* a year. In 1783 the premises were not rated at all, being empty: In August 1783 the appellant purchased the premises for 58*l.* and repaired the same; but neither he nor any other person resided therein, except as hereafter mentioned, but he kept the key. In one of the rooms the appellant keeps a laibe for his amusement, and

has sometimes a fire in that room, and three chairs and a table; and in another room he keeps corn for his horse; and he also occupies the garden, worth 40s. a year, and the gardener sometimes puts his flower-pots, shrubs, &c. and some of his working tools, into another part of the dwelling house, where other lumber is also put, but no person has ever slept or lodged in the house, nor has any furniture been kept there (except as above). The appellant out of charity has permitted a poor man and his wife to live rent free in the kitchen, between which and the rest of the house, the door of communication was stopped up; the stable has not been for upwards of two years used for any other purpose than a dog kennel. It also appeared, that about five years ago, a person offered 25l. a year for the premises, which was refused. The court said, that as this gentleman occupied the garden and part of the house, his servants other parts, and a poor man another part, but those occupations were not distinct from his own, he ought therefore to be rated for the whole, for it would be attended with great inconvenience to have to enquire in each particular case what rooms of a house the owner occupied before he could be rated. Order of sessions quashed. *Durns. and East*, 4 V. 477.

By taxation] By this statute the taxation ought to be equal; and therefore ought to be continually altered as circumstances alter. 2 *Salk.* 526.

Rate to be altered according to the alteration in value.

M. 12 W. K. and Audley. A rate was agreed on in 1665, by the inhabitants of *Audley*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt Ch. J.* The old rate, however just at first, may be unequal now, and therefore the justices cannot make a standing rate, for lands may be improved. 2 *Salk.* 526.

H. 2 G. K. and Clerkenwell. An order was quashed, which was made to confirm a poor rate, which rate was made according to the *land tax*. Objected, that this taxation was not equal, because the personal estate in the public funds is not chargeable to the land tax, but it is to the poor: And by the whole court this rate for that reason was set aside. *Foley*, 12.

Land tax is no rule for the poor rate.

The court of king's bench, from the difficulties attending the matter in practice, have all along been averse from delivering any opinion upon the general question, Whether, or how far, *personal estate* is liable to be rated to the poor; but have determined the several cases upon their

Personal estate.

A farmer is not rateable for his stock.

own particular circumstances, or quashed the rates for insufficiency in point of form.

H. 5 An. Q. and Barker. Upon quashing of several orders made relating to the poor rates, the matter in difference was referred to the determination of the L. Ch. J. *Holt*; who having heard all the parties, and they not seeming satisfied with his opinion, they signified their consent in writing to submit this question to the opinion of the judges of the king's bench: to wit, Whether a farmer for his stock shall not be chargeable and taxable to the poor rate, as well as a tradesman for his stock in trade? And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of *Holt* Ch. J. Whereupon the following rule of court was made:

"Upon mature deliberation, it is considered by the court, that a farmer is not taxable to the poor rate for his stock; and that a tradesman is taxable for his stock in trade."

[Or, as it is expressed in the record, *Quid firmarius, anglice, a farmer, non erit onerabilis et taxabilis ad ratas pauperum pro pecuniis, anglice, stock; et quod artifex, anglice, a tradesman, est onerabilis et taxabilis pro pecuniis, anglice, stock, in arte, anglice, trade.*] L. Raym. 1280.

Stock in trade of tradesmen, &c.

E. 10 G. 3. K. and Witney in Oxfordshire. Upon an appeal against a rate for the relief of the poor of the parish of *Witney*, the cause of appeal was, that there are within the said parish many manufacturers of blankets and other traders, who employ under them many servants and apprentices: And such manufacturers and traders were not assessed in the said rate for their stocks in trade: And for that reason only the said rate was quashed; the court of sessions conceiving itself bound to quash the rate, on account of the omission of such stock in trade in the said rate; subject however to the opinion of the court of king's bench on the following facts: It appeared there have long been many such manufacturers and traders within the said parish, who have been constantly assessed to the *land tax* for their respective stocks in trade, but none of whom have ever been charged with the payment of any rate for the relief of the poor on account of such stocks: That as well the said manufacturers and traders, as all other occupiers of lands and houses within the said parish, have been and constantly are assessed, in this and all former rates for the relief of the poor, as well as to the *land tax*, for the lands and houses in their respective occupations.—The counsel who argued in support of the order of sessions cited and relied upon the case of *Q. and Barker*. But the court were not satisfied of the authority of this case. L. *Mansfield* expressly called it a strange case. They observed, that the opinion

opinion of three of the judges was only said to be, that a farmer for his stock was not taxable, contrary to the opinion of *Holt Ch. J.* But it doth not appear that a question was directly put to them, Whether a tradesman was taxable to the poor for his stock in trade? The court however gave no explicit opinion upon the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade. Whatever may be the future determination of that point, whenever it shall come regularly before the court, they held it improper and inconvenient for them to enter into the discussion of it upon the sessions order as it now stands. It would make great confusion, if the court were to give general opinions upon vague states of cases: They are to judge upon the case before them, and their judgment ought to go no further than the case stated to them goes. Whereas they have here asked a general opinion, without any particular case stated. They ask us this general question; without stating what is stock in trade; or, what it is that the rate has taxed: or, whether these people have any stock in trade; or, what that stock in trade is; nor any particular description of what trade is meant.—But here, the order of sessions is clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons, and that property which was thought were illegally omitted. And the order was quashed. *Burr. Mansf. 2634. Bott. 34.*

T. 15 G. 3. K. and Ringwood. On shewing cause against quashing an order of sessions which had quashed a rate for the relief of the poor of the parish of *Ringwood*. The sessions order stated, that three persons were possessed as coparceners of stock in the trade and business of common brewers and maltsters in the said parish, to the value of 4000*l.* For no part of which the said coparceners, or any of them, were or was in the said rate assessed to the relief of the poor of the said parish. And it doth not appear to this court, that stock in trade hath ever before been rated in the said parish. Therefore this court is of opinion, and doth adjudge, that the said recited rate ought to be quashed, and the same is hereby quashed accordingly. And this court doth hereby order a new rate to be made immediately for the relief of the poor of the said parish, by the churchwardens and overseers of the poor of the said parish of *Ringwood*.—On hearing the cause, the court declined entering into the merits; but as to this particular case, *L. Mansfield* said, —I have no doubt what is to be done with it, as the authority of *K. and Witney* above is

precisely in point. I think the justices would not have done very wrong, if they had acquiesced in the practice which has obtained ever since the statute of 43 *Eliz.* of not rating this species of property. The case of *K. and Witney* was determined upon this single ground, that the justices in sessions should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here, the justices at sessions should have amended the rate, if they thought this properly rateable; and then on attempting to do it, they would have discovered the wisdom of conforming to the practice, which they expressly state in the case of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them. And by the court, the order of sessions was quashed. *Cowper*, 326.

H. 17 G. 3. K. and the overseers of Andover. On a rule to shew cause why an order of sessions made for rating several tradesmen for their stock in trade towards the relief of the poor should not be quashed, the case was, The overseers made a new rate, in which they omitted to rate tradesmen for their stock, which had been formerly rated in that parish. Upon which, the other inhabitants of the parish appeal to the sessions. And the sessions make order whereby they adjudge, "That Mr. *Joseph Wakefield* is a
 " proprietor of stock in trade as draper in the parish of
 " *Andover* to the amount of 300l. and that the profits of
 " that trade is 15l. a year; and that he ought to be rated
 " towards the relief of the poor of the said parish in re-
 " spect of such stock and profits 7l. each rate in the rate
 " so appealed against." And there was the like adjudication as to several other tradesmen. And the court ordered the said rate to be amended by putting into it a rate on the said several tradesmen, in respect of such their stock and profits.—It was objected, that this order on the face of it was bad, inasmuch as it did not appear, that the several persons whose names were added to the rate by order of sessions had notice of the appeal, or litigated the question at the sessions. They were therefore without redress;
 for

for it necessarily precluded them from their appeal. The sessions as to them made an original rate, without having given them an opportunity of defending themselves.—The court held this to be a fatal objection; and therefore that the order of sessions ought to be quashed. Lord *Mansfield*, upon the general point, said, It is a very different question, whether personal estate is to be rated to the utmost extent, or not to be rated at all. It would make the poor laws very oppressive, if a man is to be taxed to the extent of his whole personal estate and income. In that case, every man who has money in the funds would be liable, lawyers for their fees, soldiers for their pay, and the like. But where men are occupiers of houses, and have stock in trade, whether such stock in trade may be taken into consideration, is a very different question. Some personal estate may be rateable. But it must be *local visible property* within the parish. It would be material to state what has been the custom of rating. If the usage should be to take in stock in trade, there would be very good right to support it. Let them therefore try it on the special circumstances of the case. Mr. J. *Aston* said, That if upon the general question it should turn out to be the law that personal property is rateable, it must be then rated, though it was never rated before.—On the present question, the rule was made absolute, for quashing the order of sessions. *Cowper*, 550.

T. 17 G. 3. K. and Hill. On shewing cause against a rule for quashing an order of sessions confirming a poor rate, it appeared that the appellant *Hill* was a clothier, and an inhabitant of the parish of *Bradford*, where many other tradesmen, particularly clothiers and manufacturers of woollen goods, likewise lived: That the churchwardens and overseers charged him to the poor rate in respect of his stock in the cloathing trade which he had in the said parish. Against which rate he appealed, alledging that he was not liable. The sessions upon the appeal adjudged him liable, and confirm the rate. In support of the order of sessions, it was argued as follows: This question takes a different turn from any other that has been discussed. For it is stated, not as a case of landholders aggrieved by the omission of a set of men rateable, as they conceive, in respect of their personal property; but as a complaint by a tradesman upon his being rated to the poor for his visible stock in trade within the parish: And this is the shape in which L. *Mansfield* said, in the *Witney* case above, such a question ought to come on: Not, as a general question, Whether stock in trade be rateable or not? But, as a particular

ticular one made by an individual, Whether he is bound to contribute to the poor rates in respect of the stock in trade which he possesses in the parish of *Bradford*? The whole question therefore depends upon the construction of the statute of 43 *Eliz.* Before the said statute, the directions of the several statutes relating to the relief of the poor were generally, that all the *inhabitants*, according to their respective properties, should contribute. The said statute of the 43 *Eliz.* makes a distinction, charging first *every inhabitant*, and then every *occupier of houses or lands* within the parish. Other subsequent statutes, as for instance those relating to the repairs of highways from time to time, enacted that assessments should be made for those purposes upon *all and every the inhabitants* owners and occupiers of lands and tenements, and also of any *personal estate usually rateable to the poor*. As to the inconvenience that may be supposed would attend the rating of personalty, stock in trade in some respects is rated to the land tax, as appears from the case of *Witney*. But if the law authorises the tax, a difficulty in the mode of levying it can be no objection. Besides, that the tax is now actually raised in many places in this kingdom, in *Lynne, Norwich, Frome, Trowbridge, Warminster, Bewdley, Blandford*, and in many parishes of *London*, and in particular that of *Whitechapel*. And in the ancient subsidies, unto which the land tax succeeded, personal estate was always rated.—*L. Mansfield* stopped the counsel in the argument for the defendant, by asking, What usage heretofore had been in this place with respect to rating stock in trade? Unto which it was answered, That the usage was waived, and that the counsel at the sessions had agreed to bring the general question before the court. *L. Mansfield* said, they had no right to do so; and thought it ought to be sent back to the sessions to state the usage. That the aforesaid highway acts referred to personal estate *usually* rateable to the poor—Afterwards, the case being sent back, and the sessions returning, that it had been the usage heretofore in the parish of *Bradford* to rate persons for their stock in trade, the court ordered the rate to stand, and the rule for quashing it to be discharged. *Cowper*, 613.

H. 22 G. 3. K. v. Rodd. Upon the appeal of *James Rodd* against a rate made for the relief of the poor of the borough or parish of *Bridgewater*, wherein he was charged four shillings in respect of his *stock in trade*, above what he was therein charged for his house and shops, and other real property. The sessions confirm the rate, and state specially—That within the said borough, it has been usual

usual and customary from the 43 of *Eliz.* and ever since the existence of rates for the relief of the poor, to assess the inhabitants of the said borough, *for and in respect of their personal property, or stock in trade*; and amongst them, such as have been of the same trade, and of similar circumstances with the appellant. That the said *Rodd* is a substantial householder within the said borough, and a butcher; and keeps an open butcher's shop therein, and lays out about 20l. one week with another in the purchase of cattle of different sorts, which he sells again after they are butchered, in small pieces, whereby he receives a profit, by which he maintains himself and his family: and that the sum of 4s. is no more than his proportionable share towards the said rate, and as other butchers pay. The question therefore submitted to the court is, Whether the said *Rodd* is rateable for his *stock in trade*. *Wallace*, in support of the rate, insisted, That an uninterrupted usage and custom or rating this species of property, from the very date of the statute down to the present time, being expressly stated, this question had lately undergone a solemn decision, and was no longer open to argument.—*Bearcroft* in reply admitted, that it was not possible to distinguish this from the above case of *K. v. Hill*. By the court: Rate affirmed. *Cal. Caf.* 147.

T. 22 G. 3. *K. v. White* and others. *Samuel White* Ship-merchant at *Poole* was rated to the poor of the parish of *St. James* in *Poole* for 13,500l. personal property, which consisted of ships or vessels employed in the *Newfoundland* trade from the port of *Poole*. The court said, that ships are rateable property like stock in trade, and that this parish is their home, and must be considered so for the purposes of the register act (a), and confirmed the rate. *Durnf and East*, 4 V. 771.

And in the same case it was determined that household furniture was not rateable to the poor, because it produces nothing to the owner. *id.*

Also in the same case it was determined that money, whether at interest or not, is not rateable. *id.*

H. 7 G. 3. *K.* and the inhabitants of *Shalfleet*. *Sherrington's* case. The question was, Whether an officer of the salt office is liable to be rated in respect of his salary?—It was argued, in behalf of the officer, that he is not liable: That assessments for relief of the poor must be made according to the person's visible ability within the town or place where he inhabits; and without having regard to

Household-furniture.

Money.

Officers are not rateable for their salaries.

(a) 26 G. 3. c. 30.

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any

any other estate which he hath in any other town or place. That this is a tax upon the profits of the man's daily labour.—On the other hand, it was insisted, that he is rateable for his salary within the words as well as meaning of the statute, which have been always construed with favour and latitude: That it is reasonable, where persons derive a benefit from the parish, that they should submit to the burdens of it: That if the officer becomes chargeable, the parish must maintain him: That every man is, for every sort of personal property which hath a certain produce, rateable to the relief of the poor in the parish where he lives: That this is a fixed, certain, permanent produce, as to the value; it is no otherwise casual or contingent, than in respect of the man's continuance in his office; if he ceases to be in office, he will cease to be taxed: That these salaries have been thought to be fit objects of taxation to the land tax; and there is much stronger reason why they should be so to the poor; they are expressly named in the land tax acts, which shews that they are fit objects of taxation in general.—By the court: This species of property is not mentioned in the act; nor has it any analogy to those sorts of property that are mentioned therein. The whole scope of the argument for the taxation is foreign to the question; namely, that a man may be rated in his parish for his personal estate. Now a man's personal estate is only what he is worth after payment of all his debts; which cannot easily appear, so as to be rated. But that is not the question here. He is here rated for this specific property, as lying in the parish, which he ought not to have been. And we are all of opinion, that this is not such a species of property as can be rated to the relief of the poor, as personal estate within the parish. *Burr. Mansf.* 2011.

Also in the above case of *K. v. White* and others, it was determined, that a collector of the customs for his salary; a captain in the navy; or a merchant's clerk; or the master of a merchant vessel, for their pay, are not rateable to the poor. *Durnf. and East*, 4 *V.* 771.

On a motion to confirm a tax laid by the justices on the toll of a corporation, *Holt Ch. J.* said, That on a reference to him by both parties, he was of opinion, that the toll was not exempted, but chargeable, though part of it was to maintain the mayor. 3 *Kebl.* 540.

M. 12 *G.* 3. *K. and Rebow.* The question was, Whether the tolls of a light-house were rateable to the poor? In support of the rate, it was urged, that if a master puts a servant into a light-house, he certainly gains a settlement:

That

Tolls taken in
corporation are
rateable.

Tolls of a light-
house not rate-
able.

That in the present case, the light-house was actually used as a dwelling-house; that the annual profit is the measure of the value; and if over-rated, the sessions can relieve. On the other hand, it was objected, that the house only is rateable, and not the tolls; that here they have rated a small building of no value but as a light-house, and scarce ten yards of land, as bringing in 1400l. a year: That the toll is collected of ships passing by, not coming in: That there are about twelve such light-houses in the kingdom, and that none of them before this instance have ever been attempted to be rated in respect of the tolls thereof. — After having taken time to consider, *L. Mansfield* delivered the resolution of the court: We are all of opinion, that the tolls being raised from vessels from different parts all over the kingdom, are not to be considered as locally related to the parish, and as such are not chargeable to the poor rate. *Loft. 77.*

E. 17 G. 3. K. and the inhabitants of *Cardington*. This case came before the court upon a rule to shew cause, why an order of sessions quashing a rate for relief of the poor of the parish of *Cardington* should not be quashed as to the assessment upon *Ashley Palmer* esquire. The case specially stated was, that *Ashley Palmer* esquire is seised in fee of the right of navigation of that part of the river *Ouse*, which lies between *Eriub* in the county of *Huntingdon*, and the town of *Bedford*, and of all the tolls arising for the carriage of coals and other goods upon that part of the navigation: That he hath power to erect sluices and staunches for the better keeping up the water and carrying on the said navigation, and that tolls are paid for passing through every sluice, and in a different rate for different sluices: That one sluice is erected in the parish of *Cardington*, at which the toll is 3d. a chaldron or load weight: That *Mr. Palmer* doth not reside in the parish of *Cardington*, nor hath he any person resident at that sluice to receive the tolls; but that the tolls for that sluice are received at *Barford*, or *Eaton*: That neither *Mr. Palmer*, nor any other of the former proprietors of this navigation, were assessed to the poor rates for their sluices or for the tolls or profits: But they have for many years been assessed to the land tax — Against the rule, it was argued, That tolls and other yearly profits being specially charged in the land tax acts, and not in the act of 43 *Eliz.* is a proof that the parliament did not intend this species of property to be charged to the poor. Besides, as *Mr. Palmer* does not reside in the parish, nor is even the toll received in the parish; if assessable at all, it must be assessed where received, and not in

Tolls taken upon a river are rateable.

in the parish of *Cardington*. And to this purpose was cited the case of *Rebow* as directly in point. If any distinction could be made between the two cases, it is, that the present is rather stronger than that; because there two persons were constantly resident in the light-house, the tolls of which were the object of the rate. But here, neither Mr. *Palmer*, nor any body who could represent him, resided in this parish.—In support of the rule, it was contended, that this species of property, though not expressly within the words, was clearly within the meaning of the statute of 43 *Eliz.* That there could be no difference between these tolls and those of any other description; as the tolls of a market; or the like, which are clearly assessable to the poor. In the case of *Rebow*, inquiry was directed to be made as to the tolls of bridges; when it appeared, that *Fulham* bridge tolls are taxed at the rate of 500 l. a year. Why not assess these tolls as well as them? As to the objection of their not being received within the parish, they might be received there if Mr. *Palmer* chose; they are not necessarily payable elsewhere. But the material thing is, that they arise within the parish. The consideration for which they are paid, is the passing through the sluice *within* the parish; and if a boat went no farther, the toll was to be equally payable. It is therefore completely due within the parish. The ground of the decision in *Rebow's* case was, that the vessels did not come within the parish, therefore the tolls were not due there; but here, they arise and are due within the parish.—The court ordered the case to stand over, that inquiry might be made as to the custom of rating this description of property in other places. In answer to the inquiries, it was returned on the part of the plaintiff, that out of 14 sluices, being the whole number erected upon this navigation, one only was rated to the poor; that the river *Ivel*, near *Bury*, the *Northampton* river, *Larke*, *Ouse*, and *Stower*, were none of them taxed. On behalf of the defendant it was stated, that the tolls at *Marlow*, *Oxford*, *Reading*, and several others on the river *Thames*, were all rated to the poor.—Upon the whole, the court was of opinion, that these tolls are rateable; and therefore directed the rule for quashing the order of sessions to be made absolute, and affirmed the rate. *Cowper*, 572.

And in the case of *K. v. mayor, &c. of London*, *M.* 31 *G.* 3. It was determined, that the barge-way and toll-gate in the hamlet of *Hampton Wick* (purchased by the city of *London* by virtue of 17 *G.* 3. *c.* 18.) were rateable towards the relief of the poor in that hamlet, for such part of the tolls

tolls as became due therein, notwithstanding the tolls were collected in another parish. *Durnf. and East*, 4 V. 21.

And also in the case of *K. v. Page*, H. 32 G. 3. It was determined, that where by a navigation act the proprietor was entitled to a toll of 4 s. per ton for goods carried from *Reading* to *Newbury*, or from *Newbury* to *Reading*, and to a proportionable sum for any less distance; and was also enabled to appoint any place of collection; it was held that the tolls for goods carried the whole voyage from *Reading* to *Newbury*, were rateable at *Newbury*, though in fact they are collected in a parish between *Reading* and *Newbury*; because the tolls become due where the voyage is completed. *Durnf. and East*, 4 V. 543.

E. 26 G. 3. K. v. Dock Company of Hull. Two justices allowed a rate for the relief of the poor of the parish of *Sculcoates*. The sessions confirmed the rate, and stated the following case: That commissioners, in pursuance of an act 19 G. 3. purchased lands in the parish of *Sculcoates*, which both before and after the purchase were assessed to the land tax, and all parochial assessments, in common with other lands within that parish; and that the Dock Company converted 3 acres 2 roods and 29 perches of the said land into part of a dock or basin, which in the whole contains ten acres: That the Company in 1783 received a clear profit for tonnage of ships of 3700l.; and that they do not owe any money under the authority of the said act: That on 7th May 1784 a rate was laid on the lands and tenements in the said parish at 1 s. 4 d. in the pound, and that part of the dock which lies in the said parish was rated at 800l.: 59l. 6 s. 8 d.—It was observed in support of the rate, that the land purchased was assessed both before and after the purchase, and which by improvement produces more than it did before, and the improved value can afford no reason why it should cease to be assessed: The rate had been increased according to the improved value of the land.—On the other hand it was said, that this property was rated as *land*, when the act had declared that the shares of the proprietors should be considered as *personal property*.—By the court: This is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act: Then the question is, Whether the act exempts this property which was rateable and rated before; but there are no words of exemption. As between the heir and executor this is to be considered as personal property; but the legislature did not intend to alter the nature of it in any other respect.—Rate confirmed. *Cas. by Durnf. and East*, 1 V. 219.

Lands converted into a dock are rateable.

The profits of
Spa water are
rateable.

T. 17 G. 3. K. and Miller. Cafe specially stated. Mrs. *Skillicome* of the parish of *Cheltenham* in the county of *Gloucester* demised to *William Miller* esquire of the same parish certain lands containing about four acres, with buildings thereon, and a certain well of mineral water thereout arising, called the *Cheltenham Spa*, at the yearly rent of 100 l.: The lands and buildings thereon, independent of the well, are of the annual value of about 20 l. And the overseers rated him to the poor as for an intire estate of 100 l. a year. It was argued, that the mineral water is not an object of taxation. And the usage with respect to other places in different parts of the kingdom was alledged, as at *Matlock*, *Buxton*, and *Scarborough*. None of these were ever rated, and the reason is, because they are not a subject of taxation within the words or meaning of the statute of 43 *Eliz.*—By *L. Mansfield*: Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land let to the defendant at 100 l. a year; and the value arises, partly from the buildings, and partly from the spring that produces the mineral water. Therefore, the profits of the spring are part of the produce of the land. In *Worcestershire* and *Cheshire*, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land; and therefore, as such, ought to be rated. *Cowper*, 619.

Engine house
rateable.

E. 23 G. 3. K. v. St. Nicholas Gloucester. The mayor and burgesses were possessed of a house in the parish of *St. Nicholas* in *Gloucester*, and erected a machine in a street leading by the said house for weighing waggons, carts, &c. for which they received 2 d. per ton for what was weighed there, but that persons were not compellable to weigh their carriages; that the steel-yard part of the said machine was in the said house which was called the engine house: That the house, exclusive of the profits of the machine, was worth 5 l. and the profits worth about 40 l. a year: That the mayor and burgesses were rated for the machine house 24 l.: 1 l. 16 s.: —By the court, The machine and the house are one entire thing, and are together rated, the steel-yard is the most valuable part of the house; the house therefore applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house: the clear profits are undoubtedly rateable, but a liberal allowance ought to be made for wear and tear, labour and attendance.—Rate affirmed. *Cal. Caf.* 162.

Also in the case of *K. v. Hogg*, *E. 27 G. 3.* it was holden, that a house wherein there was a carding machine for

for manufacturing cotton, although the engine was not fixed to the premises, but capable of being moved at pleasure, and that the building was worth only 2 guineas a year, which together with the machine was rated at 36 l.; and that it was the usage of the place not to rate personal property; yet the court held the same rateable. *Cal. Caf. 266. Durnf. and East, 1 V. 731.*

In the case of *Robson v. Hyde* esquire, and al. T. 23 G. 3. it was determined, that a private building always used as a chapel, and by contract never to be used for any other purpose whatsoever, but not consecrated, is, if a profit is made of it by letting out the pews or otherwise, rateable to the poor. But if it were absolutely given to the publick, it might be a strong ground for saying that it was not rateable. *Cal. Caf. 310.*

A private building used as a chapel, is rateable.

But in the case of *K. v. Waldo* esquire, it appeared that Mr. *Waldo*, about 6 years before, pulled down a house for which he was rated to the poor 8 guineas a year, and built on the same spot a new one, which was now rated; in which house ten poor girls were educated, maintained, and brought up on his charity, and he provided and paid a woman to superintend and instruct them. That this woman and the ten children were the only inhabitants in the house, which was solely appropriated for this purpose.—*L. Mansfield*: Mr. *Waldo* makes no profit of this building, and it is sufficient that this is so in fact, and the profit is here in fact applied to publick and charitable uses.—*Buller J.* Do you mean to argue that if a man gives all he has in charity, he shall apply something more in charity? Rate quashed. *Cal. Caf. 358.*

An almshouse is not rateable.

The overseer of *Stoke Nayland* in *Suffolk* made a rate in which he charged the quit rents of several manors within the parish; which rate the justices refused to sign, because the quit rents ought not to be taxed: Whereupon the overseer, on application to the king's bench, obtained a rule to enforce the justices to sign it; which was strongly opposed, because no instance could be given that ever the quit rents were charged: but the court ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved, he might bring an action upon the distress, and the matter in law be brought in question, *Barth. 14. M. 3 J. 2.*

Quit rents and casual profits of manors are not rateable.

In another like case, *Eyre J.* said, that a quit rent is not taxable to the poor, for the tax ought to be laid on the occupier: But *Holt Ch. J.* said, it was otherwise ruled in the case of one *Williams* of *Suffolk*. *Comb. 264. T. 6 W.*

Finally, in the case of *K. and Vandewall, E. 33 G. 2.* this point came fully to be considered. *Samuel Vandewall* esquire, lord of the manor of *Aldenham*, was charged to the poor rate, for the manor itself (exclusive of the demesne lands), consisting, as was stated, of quit rents, fines for renewal of copyholds, and other casual fruits and profits, the whole amounting to about 130 l. a year; the said *Samuel Vandewall* occupying nothing else in the parish. On appeal to the sessions, the justices confirmed the rate, setting out this special case. The order being removed by *certiorari*, it was objected, that the lord was not an inhabitant, nor were the rents and profits of the manor rateable under the statute, being neither lands, houses, tithes, nor any of the things recounted in the statute.—It was argued in support of the rate, that these words were only put as examples; that the statute hath not determined what species of property is or is not taxable, but that has been fixed by the resolutions of the courts; that personal estate is taxable, though not mentioned in the statute; that the lord is an inhabitant in this respect, or if not, yet the statute mentions, “inhabitants, parsons, vicars, and others;” and the authorities were cited, where it is said to have been determined, that tradesmen are rateable for their stock in trade; that a toll of a market is taxable; that ground rents are taxable, and also quit rents.—On the other hand, it was observed, that quit rents issue out of lands, which have already been full rated in the hands of the occupier, and therefore are not liable to be rated again; that casual profits are of the same nature; they are part of the profits of the land, which hath already been fully rated; that it is impossible to be law, that ground rents are rateable, they are of the nature of all other reserved rents on leases for years; that tolls (if rateable) are only so because not rated in any other shape; that few mines are ever rated, though expressly named in the statute, because their profits are casual; that if ground rents are rateable, this will equally extend to all other rents whatever, which is a matter of the utmost importance.—By *L. Mansfield*: The authorities that have been cited are only scraps and strange stuff. And he delivered the resolution of the court, that the rents and casual profits of the manor are not rateable to the poor; which he said was so clear, that there was no need to enter into reasonings about it: And so far as appeared to the court, such rents and profits had never been attempted to be rated before; and there is no colour for the attempt now, after more than a century and a half

since the making of the act upon which it is grounded.
Burr. Mansf. 991. *Black. Rep.* 212.

Of every inhabitant] T. 19 G. 2. K. and the churchwardens of *Woolly*. The court refused to grant a *mandamus*, directing to insert particular persons in the poor rate, upon affidavits of their sufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making the rate, without meddling with the question, who is to be put in or left out; of which the parish officers are the proper judges, subject to an appeal. *Str.* 1259.

And of every occupier] The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice. *The farmer, and not the landlord, is to be rated.*
Dalt. 165.

And the reason why the occupier is to be so charged is, that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. *Fitz-Gib.* 297. *Case and Stephens.*

M. 11 G. Theed and Starkey. The lessor covenants with the lessee, to pay all taxes on the lands demised. The lessee brought an action of covenant, and assigned for breach the not paying of the rates to church and poor. Upon demurrer it was objected, that those rates are personal charges, and not on the land: And for that reason the defendant had judgment. *8 Mod.* 314.

Occupier of lands, houses] E. 1 An. By Holt Ch. J. Hospital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a greater burden upon his neighbours. *2 Salk.* 527. *Hospitals, how far rateable.*

But with respect to the hospital itself, it was determined, in the case of *St. Luke's* hospital for lunatics, *M. 1 G. 3.* that such hospitals are exempted, excepting only those parts of them which are inhabited by the officers belonging to the hospital; as the chaplain, physician, and the like, in *Chelsea* hospital; and these apartments are to be rated as single tenements, of which the said officers are the occupiers. The reason why the apartments of the sick or mad persons in the present case are not to be rated is, that there are no persons who can be said to be the occupiers of them. For it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital

pital in trust for the charitable purposes to which it is applied, cannot with any propriety be considered as the occupiers of it; nor, lastly, can the servants of the hospital, who attend there for their livelihood: And no other persons (said *L. Mansfield*) can with any shadow of reason be considered as the occupiers thereof. *Burr. Mansf.* 1053. *Black. Rep.* 249.

T. 9 G. 3. K. and the inhabitants of *St. Bartholemew's the Less*. The mayor and commonalty of the city of *London*, governors of *St. Bartholemew's* hospital, pulled down several old houses belonging to the hospital, the tenants whereof had been usually assessed to the poor rate, and on the site of the said ancient houses erected several piles of building for the use of the said hospital, and inclosed an area within the same for the benefit of the patients. The parish officers assessed the mayor and commonalty to the poor rate in respect of the premises. The question was, Whether the governors of the hospital are rateable to the poor in respect of the buildings and area abovementioned?—By *L. Mansfield*: The poor rate must be charged upon the occupiers. In the case of *St. Luke's* hospital, and of *Chelsea* hospital, the officers were rated as occupiers. The corporation are not in fact occupiers: The poor are occupiers, but they are not rateable: The general rule must be followed: That rule is, That you must find an occupier to be rated. The poor people cannot be rated at all. The servants cannot be rated as occupiers, nor can the corporation be charged as occupiers. *Burr. Mansf.* 2435.

The master and fellows of colleges are rateable as a corporation.

T. 14 G. 3. K. and Gardner. The master and fellows of *Catherine Hall* in *Cambridge* purchased several houses in the parish of *St. Botolph*, and pulled them down, and amongst other particulars converted part of the ground on which the said houses had stood into an area, and planted the same with trees for ornament. The parish assessed them for the same to the poor rate. The question was, Whether the master and fellows, being a body corporate, are liable to be rated?—In support of the rate it was argued, that corporations having lands may be rated, and are to be considered as *inhabitants* in respect of such lands. *Lord Coke* (2 *Inst.* 703.) in his exposition of the statute of 22 *H. 8. c. 5.* for the repair of bridges, commenting upon the word *inhabitants*, with respect to what persons are included under that description, says, every corporation and body politick having lands which they possess and have in their own hands, are *inhabitants* within the purview of the said statute. And in the case of *Thursfield and Jones* (1 *Jones* 187.) the court held, that the master and wardens of

of the company of wax-chandlers were chargeable to the repairs of the church in respect of their corporate lands. And no reason can be given why they are not equally so under the statute of 43 Eliz. for the relief of the poor.—Against the rate it was insisted, that corporations are not rateable, because the remedy of imprisonment, upon failure of distress, is impossible; and the remedy by distress alone is inadequate. The case of *St. Luke's hospital* shews, that nothing can be rated which doth not yield a profit. The advantages gained by this area are just like those which are gained by *St. Bartholemew's hospital* by their area. But with regard to the profit accruing from it, the subject matter excludes the possibility of rating it: for nothing is more apparent, than that where property is the subject of a rate, the value of it must be certain, because the measure of the profit is the measure of the rate. But here, nothing is or can be received, and therefore there can be nothing to pay.—By *L. Mansfield*: The question is, Whether in law a corporation may be considered as *occupiers* or *inhabitants*? By the statute of *Eliz.* all lands and all real property are rateable to the poor; and must have *occupiers* and *inhabitants*, in respect of taxation: therefore if a man has no tenant, and is seised of lands in fee, he is said to occupy them himself, or by his bailiff or agent. No case hath been instanced to shew, that a corporation is exempted from this tax; and I can find no authority in law which says they cannot be rated. And the authorities which have been cited tend to prove, that corporations are rateable both as *inhabitants* and as *occupiers*; if they are liable in respect of the repairs of *bridges* and of *churches*, they are equally so by the statute of *Elizabeth* in respect of the poor. As to the other objection, that this area yields no profit, and therefore ought not to be rated, the answer is, that the value is in the judgment of the assessors; and if the college think themselves over-rated, they have their remedy by appeal.—*Mr. J. Aston*: I have no idea but that the corporation may be *occupiers*; and as to the remedy of levying a duty upon a corporation, the books all agree that it can be levied, though they differ in the mode. *Sheppard*, in his treatise upon corporations, says, “If a sum of money be to be levied upon a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member of the corporation.” But in the case of the city of *London* concerning the duty of *water-bailage* (1 *Ventr.* 351.) it is different, and is thus, “Note, It was said that for a duty or charge upon a corporation every particular member thereof is not liable;”

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“ but process ought to go in their public capacity.” And this is the right law. In the case of *Thursfield and Jones* (*Skin.* 27.) the corporation were cited, not by their proper names, but in their politick capacity; and the court said, “ If the company had neither land nor goods, there “ was no way to make them appear; but if they stood out, “ they must lie by the heels in their natural capacity.” Therefore the idea that a corporation is not liable to be rated or amenable by process in respect of a rate is not well founded. Besides, by the act of 17 G. 2. c. 38. the remedy of distress is extended beyond the particular parish, into other precincts, and even into other counties. So that their property is answerable, though they cannot personally be punished.—The other two justices concurred, that the master and fellows, as a corporation, were liable to be rated. *Cowper*, 79.

Royal palaces
and parks how
far rateable,

H. 17 G. 3. Old Windsor v. Mathews. Samuel Mathews was rated to the poor rate for a keeper's lodge in *Windsor Great Park*, and two acres of land which he occupied as one of the keepers of the said park; which rate was confirmed at the sessions.—And by the court it was determined, that *royal palaces* in the occupation of the royal family, are not rateable to the poor; but that servants occupying separately house and land belonging to the crown, whether they pay for the same by rent, or by service, are rateable. *Cal. Caf.* 1.

T. 26 G. 3. L. Bute v. Grindall and another. This cause was tried at the assizes in *Surrey* before *Gould J.* When the jury found a special verdict which stated *inter alia* that *L. Bute* was duly appointed ranger of *New Park* near *Richmond*; and had granted to him the custody of the houses, lodges, &c. and also the *herbage and pannage of the said park*. That some part of the park is inclosed lands, some part thereof meadow, and some part arable land and sown with corn, rye grass and clover, in the ordinary course of husbandry: That the meadow has been always mowed and the hay thereon made by persons paid by the king, who also found the hay-feed; that 66 loads of hay when made has been always carried by the king's waggons into the park for the deer, and the overplus was stacked up for the use of the king's horses, and the ranger's horses, and eat by them, but never any sold: That when the arable land was sown with corn, the ranger found the seed; and when with rye-grass or clover, the king found the seed; and was manured, plowed, and sown by the king's servants and horses, and reaped by the ranger, and sold for his benefit, and the king had no part; that the straw was used

for thatching the hay ricks, and by the king's cart horses. That the profits arising to the ranger from the said lands are worth 100 l. a year; but the herbage and pannage of the park have yielded no profit to the ranger.—By *L. Mansfield*: The question is, Whether the plaintiff is rateable at all? Not for how much or in what proportion. It is clear he is not rateable for the herbage and pannage, because they yield no profit; but there is a parcel of land inclosed which he sows, and afterwards reaps the corn from, to the amount of 100 l. a year; therefore he is occupier; and *quo nomine* occupier can make no difference whether by gift or for wages.—*Buller J.* It is immaterial what interest the occupier has in the lands, whether he holds as tenant at will, or any other tenure: It is not necessary to inquire into the occupier's title. *Durnf. and East, 338.*

E. 28 G. 3. L. Amberst v. L. Somers and others. The question for the opinion of the court was, Whether stables rented by the colonel of a regiment by order of the crown, for the use of the regiment, were liable to be rated for the relief of the poor. The court were of opinion they were not rateable. That neither the possessions of the crown, or of the public are liable to be rated to the poor. *Durnf. and East, 2 V. 372.*

Stables rented by the colonel of a regiment, not rateable.

M. 30 G. 3. K. v. Hurdis. Upon the appeal of *James Hurdis* against a poor rate at the sessions at *Seaford*, the rate was confirmed, subject to the opinion of the court on the following case: The appellant objected to the rate, because one *Wood*, gunner of the king's fort and battery at *Seaford*, who was a servant to his majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was inserted therein, and charged as the occupier of the battery house 10 s. At the time of making the rate he was, and still is a head or master gunner, and acted as such in the fort or battery of *Seaford*. The fort and battery house are the property of the crown. A master gunner is a warrant officer appointed and removeable at pleasure by the master general of the ordnance; though his office is usually considered as a provision for life. *Wood* being so employed in the fort, occupied the whole of the house, except one room, which is allotted to the under-gunner by direction from the ordnance; and the furniture of this house belonged to *Wood*. The inhabitants of the town, port, or parish, paying to the poor rate thereof, have a right to vote in the election of members of parliament for the town and port; and the appellant is an inhabitant of that description.—*L. Kenyon Ch. J.* I do not feel that my

A master gunner occupying the battery house, rateable.

opinion upon this subject militates against any decided case; but I shall determine upon the ground of positive law, as it is laid down in the 43 *El.* which subjects *every occupier* of lands, houses, &c. to be rated to the relief of the poor. Now it is expressly stated in the case that *Wood was the occupier of the battery house*: and though perhaps it might have been contended below that he was not the occupier, in the legal sense of the word, yet the finding of the sessions precludes that question here. It is not, however, a general position that a servant of the crown occupying a house in respect of his office is not rateable for it; for I was always rated for the house which I had as master of the rolls: and so are the auditors and tellers of the exchequer. Soldiers indeed cannot be said to be the *occupiers* of their barracks, in the legal signification of the word; they are no more than mere servants. And in the case of *L. Amberst v. L. Somers*, it appeared that the former was not the occupier of the premises rated. The other judges concurred. Orders confirmed. *Durnf. and East*, 3 *V.* 497.

Tithes.

Tithes] *H. 4 G. K. and Turner*. The defendant being assessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he is absolutely discharged. But by the court: As vicar he is chargeable by the 43 *El.* and the sessions hath only power to moderate, but not discharge. And the order of sessions was quashed. *Str.* 77.

And a parson who lets to each parishioner his own tithes, is properly the occupier, and ought to be rated. 16 *Viner*, 427.

But if a parson makes a lease of the tithes to one person, who afterwards lets the same to each parishioner, there the lessee is the occupier, and ought to be taxed. So if a man has a wood, or standing corn, and sells the same standing; the vendor is the occupier, and shall be taxed. 8 *Mod.* 61.

T. 8 G. K. and the inhabitants of *Lambeth*. The parson lets his tithes to farm; and the farmer agrees with the tenant of the land, that in consideration of his paying so much, he shall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. And the sessions discharge the lessee of the parson, and tax the tenant of the land. But by the court: The order must be quashed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore, unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can
never

never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under lease of a thing that lies only in grant. Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined, that makes him the occupier; or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of sessions must be quashed. *Str.* 525.

T. 29 G. 3. K. v. T. Carlyon, clerk, and another. Upon an appeal to the quarter sessions in *Cornwall* against a poor rate, the same was confirmed, subject to the opinion of the court, on a case, stating that the appellants were the proprietors of the tithe sheaf of the parish of *Paul*, and also of one tenth of all fish caught and brought on shore within the parish, for which they and their tenants were rated. The only question made was concerning the rateability of fish, which had been always rated in the parish of *Paul*, and being a property yielding a certain annual profit, the sessions were of opinion that it was rateable, and confirmed the rate.—*L. Kenyon Ch. J.* This question is decided by the express terms of the statute 43 *Eliz. c. 2. s. 1.* which after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate and propriations of tithes*, in respect of which the rate is to be made, and indeed the spirit of the law coincides with the words of this statute. For the legislature intended that when rates are made, every person should contribute according to the benefit which he receives within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said, that only property which is *visible* should be rated; but

but I think that is carrying the rule of exemption too far; for oblations and other offerings which constitute the rectorial or vicarial dues are rateable.—Order of sessions confirmed. *Durnf. and East*, 3 V. 385.

Coal mines or saleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

Lead mines, in
what case rate-
able,

In the case of the *Governer and company for smelting down lead* against *Richardson* and others, *M.* 3 G. 3 a point was reserved before Mr. J. Bathurst at *Carlisle* affizes 1761, which was thus: The defendant had distrained for the poor rate assessed on the occupiers of the *lead* mines lying in the parish of *Alston*; upon which they brought this action. The case states, that the plaintiffs were lessees from *Greenwich* hospital; that they worked the mine, but did not live in the parish of *Alston*; that the profits of the hospital that year amounted to 1900 l. but those to the plaintiffs, the lessees, were quite precarious and uncertain, and that some years they gained nothing; that no lead mines had ever been assessed, except in an instance or two since making this distress.—By *L. Mansfield* Ch. J. The question is no more than this: Whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 *Eliz.*? Now nothing can be clearer, than that these mines are not within the letter of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal* mines expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expence than coal mines are. And at that time, all copper, lead, and tin mines, in *Derbyshire*, *Cornwall*, and *Mendip* in *Somersetshire*, (which are the only counties where works of that kind were then established,) were governed by particular laws; whereby any stranger conforming to the ceremonies thereby required, was at liberty to work those mines, without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expence, and often ruined the projectors; it is no improbable conjecture, that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this publick utility, to exempt them from any other burden or imposition than those that the miners law had imposed. Indeed

Indeed if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land : But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as here might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable.—Mr. J. *Denison* was of the same opinion.—By Mr. J. *Wilmut* : There is a material difference between coals and other mineral works. Coals are easily found ; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered how dangerous it would be to discourage these kinds of adventurers, by subjecting them to a tax. Another thing which convinces me that the legislature meant only to include coal mines is, that in the statute of 31 *El. c. 7.* concerning cottages, they have used the words *coal mines and all other mineral works* ; which plainly shews, they never understood that coal mines would comprehend other sorts of mines. *Burr. Mansf. 1341. Black. Rep. 349.*

E. 16 G. 3. Rowls and Gells. The plaintiff *Rowls* was lessee under the crown of all lead mines with their appurtenances, within the soak and wapentake of *Wirksworth*, with the *lot* and *cope* within the said soak and wapentake, and was assessed for the same, as for an estate of 500 l. a year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, got, dressed, and made merchantable at all the lead mines within the said soak or wapentake ; and *cope* is, sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to and received by the plaintiff, without any risk or expence in working the mines, and in that year wherein they were assessed amounted to the clear sum of 500 l. ; but they are uncertain, and vary every year. It was argued, that this species of property is not assessable to the poor ; and for this were cited the above cases of the *Governor and company for smelting lead* against *Richardson*, and also the case of *K. and Vandewall (a)*. Unto which it was answered, that both the cases are distinguishable from the present. In *K. and Vandewall*, the court held the quit rents of a manor were not assessable ; but the ground of the decision was, that the

(a) *Ante*, this title.

land itself was before assessed; and therefore if the lord were liable, it would be a double assessment. In the other case, the mine itself was assessed, which could not be, on account of the great uncertainty and hazard attending the adventure. But here, the mine itself is not assessed, nor are the miners in any respect effected: But it is the share of profit accruing to the lord, which is rated as incident to and in respect of the soil, and by way of recompence for the injury done to the soil.—*L. Mansfield* delivered the resolution of the court: The poor rate is not a tax on the land, but a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead* mines are not within the statute of 43 *Eliz.* They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes therefore upon the adventurers would be hard, and they are therefore excused. But he, who in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable on the same ground; and therefore is expressly charged to the land tax, as that falls upon the landlord. He is alike liable to the poor rate for his visible real property in the parish; tho' where the poor tax is a charge on the lessee, the landlord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light: because the lord pays, not for that, which the lessee or adventurer is excused from paying for; but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportion to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as such obligatory payment is in respect of the land, the land-owner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence, or possible risk. Therefore we are all of opinion, that the plaintiff is liable to be rated for this property. *Cowper*, 451.

M. 30 G. 3. K. v. St. Agnes. Two occupiers of rateable property in the parish of *St. Agnes*, appealed against the poor rate, because *J. P. Andrews*, trustee of *J. Enys* a minor, was omitted to be rated for the *fee farms of tin* arising out of his premises in *St. Agnes*. And also because *N. Donnithorne* was omitted to be rated for *toll tin* raised in the parish of *St. Agnes*, and to which they are entitled. The rate was quashed at the sessions, subject to the opinion of the court on the following case:—*J. P. Andrews* as trustee of *J. Enys* is entitled to a certain dish or measure arising out of certain lands and tin bounds in *St. Agnes*, called *toll and farm tin*; which toll is one 15th part of all the tin gotten in the lands of *J. Enys* within the parish of *St. Agnes*; and which said *farm tin or due* is one 12th part, after the said 15th part is deducted, *for toll of all such tin so gotten within the tin bounds* in the parish; and which said dues or duties are due and payable by the laws and customs of the *Stannaries of Cornwall*, free and clear of all risk and deductions whatsoever: but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And *N. Donnithorne* is entitled to a certain dish or measure called *toll tin or dues*, arising out of certain lands in *St. Agnes*, and due and payable in the manner before stated, and which toll varies, and is uncertain, but also produces a considerable sum annually.—*Morris* moved, that this case might be sent down to the sessions in order that *Andrews* and *Donnithorne* should be made parties to it. For though it was held in *K. v. Maddern*, that a rate might be quashed on an objection similar to the present, without giving notice to the party whose name was omitted; yet in this instance the parties below had colluded together, and *bad consented that the rate should be quashed*, subject to the opinion of this court whether *Andrews* and *Donnithorne* ought to be rated on the statement of a case on which they had not been heard.—But refused by the court.—*Dampier*, in support of the order of sessions, cited *Rowls v. Gells*, as deciding this question; which *Gibbs, contra*, admitted.—*Morris* again renewed his application, saying, that if he could be made a party here, he should endeavour to shake the authority of that case.—*L. Kenyon Ch. J.* said, he approved of the cases of *Rowls v. Gells* and *K. v. Maddern*; though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions.—By the court:—Order of sessions, quashing the rate, confirmed. *Darnf. and East, 3 V. 480.*

Lands to be rated where they lie.

In the said parish] A man having lands in other parishes than where he lives, the same being in lease or not in lease, he is to be taxed in the parish where he lives, according to his visible estate there, and not for his lands or rent in another parish. *Dalt.* 165.

For the taxation ought to be made upon the inhabitants and occupiers of lands within the parish, according to the visible estates and possessions, real and personal, which they have and enjoy within the parish, without regard to any estate which they have elsewhere. *2 Bulstr.* 354.

Improved wastes.

And by the 17 G. 2. c. 37. Where there shall be any dispute in what parish or place improved wastes, and drained and improved marsh lands lie, and ought to be rated; the occupiers of such lands, or houses built thereon, tithes arising therefrom, mines therein, and saleable underwoods, shall be rated to the relief of the poor, and to all other parish rates, within such parish and place which lies nearest to such lands; and if on application to the officers of such parish or place to have the same assessed, any dispute shall arise, the justices at the next sessions after such application made, and after notice given to the officers of the several parishes and places adjoining to such lands, and to all others interested therein, may hear and determine the same on the appeal of any person interested, and may cause the same to be equally assessed, whose determination therein shall be final. But this shall not determine the boundaries of any parish or place, other than for the purpose of rating such lands to the relief of the poor, and other parochial rates. *s.* 1, 2.

The form of the rate may be to the following effect.

Form of the rate.

AN assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of _____ in the county of _____ made and assessed the _____ day of _____ being the first rate at sixpence in the pound for the present year _____

			<i>l.</i>	<i>s.</i>	<i>d.</i>
A. B.	_____	_____	0	3	0
C. D.	_____	_____	0	0	9
E. F.	_____	_____	0	2	6

And so forth.

Assessors, A. B. }
 C. D. } Churchwardens.
 E. F. }
 G. H. } Overseers of the poor.

a. By

2. By the aforesaid statute of the 43. *El.* the said rate and taxation shall be made, *with the consent of two justices, one whereof is of the quorum, dwelling in or near the parish or division.* s. 1.

Allowance of the rate by the justices.

And this consent is usually given, by the justices signing the same, with their allowance thereupon, thus :

WE two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do consent unto and allow of this assessment ; Witness our hands the ——— day of ———

J. P.
K. P.

But this consent is to be understood of two justices out of sessions ; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal : for in such case the party would be deprived of the benefit of appealing. *L. Raym.* 798.

And if the justices refuse to sign and allow the rate, the court of king's bench will grant a *mandamus* to compel them.

M. 7 G. K. and the justices of *Dorchester*. A *mandamus* issued to the justices to sign a poor rate made by the churchwardens and overseers. Before the return a motion was made to supersede it, for several objections to the fairness of the rate ; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return. But by the court : The two justices are necessary to sign the rate only by way of form ; for it is the churchwardens and overseers that have the power of making it ; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination. The *superseas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate : and the court having before given their opinion of this upon the motion, they resented this usage so far, that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate. *Str.* 393.

T. 7 G. 3. K. against *Edwards* and *Symonds*. The defendants were justices of the peace for *St. Ives* in *Cornwall*, and had evaded the signing of a poor rate, in obedience to a writ of *mandamus*, by keeping out of the way, so as not to be served with the writ ; and an attachment was granted for the contempt. *Black. Rep.* 637.

The churchwardens and overseers shall cause public notice to be given in the church, of every rate for relief of the poor, allow-

Rate to be published.

allowed by the justices, the next Sunday after such allowance; and no rate shall be reputed sufficient to be collected, till after such notice given. 17 G. 2. c. 3. s. 1.

The next Sunday after such allowance] In the case of *K. v. Newcomb* and another, T. 31 G. 3. It was determined, that if a poor rate be not published in the church on the next Sunday after it hath been allowed by the justices; it is a nullity, and payment under it cannot be enforced, although not appealed against at the sessions. And *L. Kenyon Ch. J.* said it was a radical defect in the rate itself, which nothing could cure. *Durnf. and East, 4 V. 368.*

Any person may inspect the same.

And they shall permit an inhabitant to inspect such rate at all seasonable times, paying 1 s; and shall give copies on demand, being paid 6 d. for every 24 names. 17 G. 2. c. 3. s. 2.

And if any churchwarden or overseer shall not permit any inhabitant to inspect, or refuse to give copies as aforesaid, he shall forfeit 20 l. to the party grieved. s. 3.

Appeal against the rate.

If any person shall be aggrieved by any assessment, or shall have any material objection to any person's being put in or left out of such assessment, or to the sum charged on any person or persons therein; he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions for the county, riding, division, corporation, or franchise; but if reasonable notice be not given, then they shall adjourn the appeal to the next quarter sessions after. 17 G. 2. c. 38. s. 4.

Appeal to the next sessions] In the case of *K. v. Atkins, M. 31 G. 3.* It appeared that the rate was made in October 1789, and allowed in the November following, against which the defendant appealed to the next Easter sessions, when the appeal was dismissed with costs, because it was not made to the next sessions.—The rate and order of sessions being removed by *certiorari*, the court without hearing any argument confirmed the order of sessions on the authority of *K. v. Penryn*, and *K. v. Micklesfield. Durnf. and East, 4 V. 12.*

Which party shall begin.

In the case of *K. v. Newbury, M. 32 G. 3.* Upon an appeal against a poor rate, the question was, Which party should begin? The court said, that where the appellant alleges that he has no rateable property within the place, the respondents should first shew that he has some property liable to be rated; for it is impossible for the appellant in the first instance to prove the negative. And *J. Heywood, amicus curiæ*, said, that in *Yorkshire*, where more appeals of this kind were lodged than in any other country, when the appellant objected to his being rated at all, it is the

the practice for the respondents to begin; but if he objects to the quantum of the rate, then the *onus* lay on him. *Durnf. and East*, 4 V. 475.

Provided, that in all corporations or franchises which have not four justices, persons may appeal if they think fit, to the next general or quarter sessions for the county, riding, or division, wherein such corporation or franchise is situate. 17 G. 2. c. 38. s. 5. Appeals in corporations.

And on all appeals from rates, the justices shall amend the same, in such manner only as shall be necessary for giving relief, without altering such rates, with respect to other person mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to set aside the same, then they shall order a new rate to be made. id. s. 6.

The justices shall amend the same] E. 10 G. 3. K. v. *Witney*. The question for the opinion of the court was, Whether tradesmen were to be assessed to the poor rate for their stock in trade? but the court declined giving any explicit opinion upon the merits, whether tradesmen were rateable to the poor for their stock in trade, as the order of sessions for quashing the rate was clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons, and that property which was thought were illegally omitted. And the order was quashed. *Burr. Mansf.* 2634. *Batt.* 34. Whether the sessions ought to quash the whole rate, or amend the same when the name of any person is omitted.

Also in the case of *K. v. Ringwood*, T. 15 G. 3. Three persons were possessed as coparceners of stock in the trade of common brewers and maltsters to the value of 4000l. for which they were rated to the poor rate, which rate was quashed at the sessions. On hearing the cause, the court declined entering into the merits; but as to this particular case *L. Mansfield* said, I have no doubt what is to be done with it, as the authority of *K. v. Witney* is precisely in point, which was determined upon this single ground, that the justices in sessions should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here the justices at sessions should have amended the rate. Order of sessions quashed. *Cowper*, 326.

But notwithstanding the two preceding cases, the court of king's bench have since determined the point as to *quashing* the rate in a different manner.

H. 27 G. 3. *K. v. Maddern*. The following order was returned by *certiorari* from the sessions in *Cornwall*. Upon the appeal of *John Hoskins* against a poor rate made for the parish of *Maddern*, the following notice was produced, which

which had been served on the churchwardens and overseers of *Maddern*. "I do hereby give you notice, that I do intend to enter into, and try such appeal at the next general quarter sessions of the peace to be holden, &c. for that my objection to the said rate or assessment, and my reason for appealing therefrom, and my charging it to be partial, unfair, unequal, and unjust, is, that you have left out and omitted in the said rate or assessment the name of the Rev. *William Borlase*, as vicar of the said parish of *Maddern*, and neglected to charge, rate, and assess him, for the small tithes, dues, obventions, oblations, and offerings, due and payable to him as the vicar of the said parish of *Maddern*, and liable to be rated and assessed towards the relief of the poor of the said parish of *Maddern*, at the time of making the said rate or assessment, and for some time before." For the appellant it was moved to quash the rate for the omission stated in the notice, which was objected to by the parish officers the respondents: They insisted that under this notice, and for omission only, the court ought and were bound to amend the rate. And it then appeared that the appellant had omitted to give any notice to Mr. *Borlase* of the intention of adding him to the rate. The respondents moved the dismissal of the appeal on the above grounds; but as they did not shew to the court the value of the tithes, whereby they might amend the said rate if notice had been given, this court, for such omission of Mr. *Borlase*, and not being able in this case to amend it, do quash the same, subject however to the opinion of the court of B. R. A rule having been obtained to shew cause why the order of sessions should not be quashed: 1st, Because no notice had been given by the appellant to *Borlase* that his name ought to have been added to the rate; and 2dly, Because the rate itself ought to have been amended, and not quashed; *Gibbs* shewed cause. As to the first objection, no notice was necessary to be given to the person whose name was omitted; the 17 G. 2. c. 38. only requires notice to be given to the churchwardens and overseers. As to the 2d, this was a case in which the rate could not be amended. It was quashed on account of the omission of a person whose name ought to have been inserted; and if he had been added, it would necessarily have made an alteration in the sum to be paid by every person rated. Such an alteration would have affected the whole rate; in which case the 17 G. 2. c. 38. s. 6. expressly directs the justices to set aside the rate itself. In *K. v. St. Catherine's, Gloucester*, T. 16 G. 3. the owner of a number of houses had been rated for them all
in

in gross, and the sessions quashed the rate because the occupiers should have been rated severally. On a motion to quash that order, because, it was contended, the sessions should have amended the rate by inserting those persons who were improperly omitted, *L. Mansfield* said, "the sessions could not amend it. It is a wrong rate: persons are not rated who ought to have been; and the insertion of their names would alter the other assessments." In *K. v. Sandwich*, this court held that the sessions had done right in quashing the rate, which considerably shakes the authority of *K. v. Witney*. If the sessions did right in quashing this rate, no question can arise here on the value of *Borlase's* tithes; it is immaterial what the value was. In support of the rule it was contended: 1st, The notice given to the parish officers was not sufficient. It was determined in *K. v. Andover*, That no person could be added to a rate, to whom notice had not been given: now the case expressly states that no notice was given to *Borlase*. The sessions ought therefore either to have dismissed the appeal for want of regular notice; or adjourned the appeal as directed by 17 G. 2. c. 38. s. 4. As to the 2d question, It is the invariable practice of the sessions not to quash the whole rate on account of the omission of one person, but to amend it by adding the name of such person; and the *K. v. Witney* and *K. v. Ringwood* were cited as express to shew that this rate should have been amended and not quashed. *Cur. adv. vult.* *Ashurst J.* delivered the opinion of the court. There have been two objections made: 1st, That no notice was given to *Borlase*, whose name was omitted in the rate. 2dly, That at all events the rate should not have been quashed but amended. As to the first of these objections, there seems to be no ground for it; the 17 G. 2. c. 38. says, The party aggrieved may appeal to the next quarter sessions, giving reasonable notice to the churchwardens or overseers of the poor, &c. and says nothing of any other person; neither does the nature of the case require it. For the complaint is against the churchwardens and overseers for having done injustice to the rest of the parish, by their having left out persons who ought to be rated, and by those means imposed a greater burden on those who are rated than they should have done. It then becomes their business to take proper steps to gain all necessary information; and there is still less occasion for giving notice to the individual, if the justices ought to quash the rate and make a new one. As to the 2d objection; we are of opinion, That the justices have done right in quashing the rate; for though this is the case only of a single person omitted, it is impossible to draw the line; and it might

might as well be the case of fifty, which would impose upon the rest of the parish a greater burden than they ought to bear. And it is not enough to say, that the more money is raised by the rate the longer it will last; for it may be an inconvenience to many persons to pay at once double the sum which is necessary to be raised for the immediate purposes of the parish. The case of *K. v. St. Catherine's, Gloucester*, is in point. There the objection to the rate was the leaving out of the rate Mr. Pitt's tenants, for which the sessions quashed it. The court said, the justices had done right, for if all proper persons had been rated, of course a less sum would have been requisite from the rest of the parish. As to the case of *K. v. Witney*, the point before the court was, Whether stock in trade ought to be rated? "The court said the sessions had not stated what the stock in trade was, or what it was that the rate had taxed; or whether the persons rated had any stock, or what that stock in trade was, nor any particular description what trade was meant." The court indeed is made to say further, that on quashing the old rate a new one ought to have been made; but that was not the point on which the decision turned. And indeed it may seem doubtful whether the justices are the proper persons to perform this office, as the consequence of adding a new set and description of persons would be, that a great many enquiries must be made, which would exceed the bounds of the justices sitting; and besides the party, if over-rated, ought to have an opportunity of appealing, which I do not know that he could have from one quarter sessions to another. The making of a rate is in its nature a *ministerial*, and not a *judicial* act. For though they exercise a judgment in saying he ought to be rated, yet the *quantum* is a matter of fact, according to the value of the estate; against all which, after the rate is made, he ought to have the liberty of appealing. Therefore, on the whole, we are of opinion that the rule must be discharged. *Durnf. & East, 1 V. 625.*

Where the appellant is over-rated, the sessions may amend the rate.

T. 28 G. 3. K. v. Chesbunt. At the sessions for *Hertfordshire*, *Eliab Breton* appealed against a poor rate for the parish of *Chesbunt*, alleging that he was over-charged: the sessions ordered that he should be relieved, by being charged at 21l. a year, instead of the sum he stood charged with, and that the rate should be amended accordingly. A rule was obtained to shew cause why the order of sessions should not be quashed, on the ground that the sessions could not relieve the appellant without altering the whole rate; and that the whole rate ought to have been quashed on the authority of the above case of *K. v. Madder.*

But without argument, the court said, that the case of the *K. v. Muddern* could not govern the present, because that was just the reverse of this. There a person had been omitted in the rate; here an occupier was *over-charged*. They were therefore clearly of opinion, that there was no necessity for the sessions to quash this rate; that they had acted properly in amending it; and that the 17 G. 3. c. 38. would be nugatory if it did not apply to a case like this. Rule discharged. *Durnf. & East*, 2 V. 623.

And the court may award costs to either party as in cases of settlement by the 8 & 9 W. id. s. 4.

Which shall be recovered, according to the said statute, by indictment, if the party lives within the jurisdiction of the justices; otherwise, by distress, or commitment where no distress is to be had.

M. 31 G. 3. K. v. Proffer and others. On an appeal against a poor rate because certain persons were omitted to be rated, it was determined, that a parishioner who is liable to be rated, but who is not in fact rated, is a competent witness to prove the rateability of the appellants. *Durnf. & East*, 4 V. 17. Who may be witnesses.

True copies of the rate shall be entred in a book, by the churchwardens and overseers, within 14 days after all appeals from such rates are determined; and they shall attest the same, by putting their names thereto; and all such books shall be kept by the churchwardens and overseers for the time being, whereto all persons liable to be assessed may freely resort, and shall be delivered over from time to time, to the new churchwardens and overseers, as soon as they enter into their offices, to be preserved and produced at the sessions when any appeal is to be heard. 17 G. 2. c. 38. s. 13. After appeal, rates to be entred in a book.

It shall be lawful as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices, one whereof is of the quorum, to levy the said sums, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale. 43 El. c. 2. s. 4. Rate to be levied by distress.

And by the 17 G. 2. c. 38. The goods of any person assessed and refusing to pay, may be levied by warrant of distress, in any part of the county; and if sufficient distress cannot be found within the county, on oath made thereof before a justice of any other county (which oath shall be certified in the warrant) the goods may be levied in such other county or precinct, by virtue of such warrant and certificate; and if any person shall be aggrieved by such distress, he may appeal to the next sessions for the county or precinct where the assessment was made. s. 7.

But by *Holt Ch. J.* in the case of *Tracy and Talbot, T. 3 An.* The rate cannot be distrained for by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. 2 *Salk.* 532. That is to say, the non-feasance of the party shall not be left to the judgment of the officer, who may out of private resentment sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may shew cause variously why a distress should not be granted; as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

The form of the summons in which case may be this :

Westmorland. } To *A. O.* of the parish of — in the
said county, yeoman.

WE whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county, one whereof is of the quorum, do hereby summon you personally to appear before us at the house of — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day, to shew cause why you refuse to pay the rate for assessment made for the relief of the poor of the said parish for this present year; otherwise we shall proceed as if you had appeared. Given under our hands and seals the — day of — in the year of our Lord —.

And then the warrant of distress thereupon may be thus :

Westmorland. } To the churchwardens and overseers of
the poor of the parish of — in
the said county.

WHEREAS in and by a rate and assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, *A. O.* an inhabitant and occupier of an house in the said parish of — was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year the sum of 3s. And whereas it duly appeareth unto us, two of his majesty's justices of

of the peace in and for the said county, one whereof is of the quorum, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of 3s. hath been lawfully demanded of the said A. O. and that the said A. O. hath refused and doth refuse to pay the same: And whereas the said A. O. having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid: [Or, And whereas it hath been duly proved to us upon oath, that the said A. O. hath been duly summoned to appear before us the said justices, to shew cause why the same should not be paid, but he the said A. O. hath neglected to appear according to such summons; and hath not shewed to us any sufficient cause why the same should not be paid:] These are therefore to require you forthwith to make distress of the goods and chattels of him the said A. O. And if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of — and also your reasonable charge of taking, keeping, and selling the said distress; rendering to him the said A. O. the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain. Given under our hands and seals this — day of —

And where any distress shall be made, for money justly due for relief of the poor, the distress itself shall not be deemed unlawful, nor the parties making it be deemed trespassers, for any defect or want of form in the warrant for the appointment of overseers, or in the rate, or in the warrant of distress thereupon; nor shall the parties distraining be deemed trespassers *ab initio*, on account of any irregularity, which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity, may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action, he shall be paid his full costs. But no plaintiff shall recover in any action for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought. 17 G. 2. c. 38. s. 8, 9, 10.

In defect of such distress, it shall be lawful for two such justices to commit such person to the common gaol, there to remain without bail or mainprize, until payment of the same. 43 El. c. 2. s. 4.

Distress shall not be deemed unlawful or want of form in the proceedings.

Commitment for want of distress.

Arrears to be levied by the succeeding overseers.

The person assessed dying before payment.

And if any person shall neglect to pay to such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the same which are allowed to be due to them in their accounts, 17 G. 2. c. 38. s. 11.

In case a person charged shall die before payment (which is a thing that must needs very frequently happen), it hath been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer the same. As in the case of *Stephens* against *Evans* and others, *E. 1 G. 3. William Vesey* was assessed to the poor rate, and died intestate. Administration of his goods was granted to *John Stephens* the plaintiff. After which, two justices executed a warrant, in which warrant the said assessment was recited; and in the said warrant it was also recited that it appeared to the justices on the oath of the late overseer, that the sum assessed had been demanded of the said *William Vesey*, and (since his decease) of his widow and representative *Susannah Vesey*, and that they refused to pay the same; therefore the justices require the officer to distrain the goods and chattels of the late *William Vesey*. An action of trover was brought by *Stephens* the administrator, and a special case was stated for the opinion of the court; and the question as stated was, Whether the distraining and taking and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff his administrator, by virtue of the said warrant, was lawful, or not?—*Mr. Norton*, on behalf of the plaintiff, argued that it was not lawful, and that an action of trover is maintainable against the parish officers for taking them. And he made three objections: 1. It was a bad rate; being made to reimburse an overseer, for the overseer was not obliged to advance the money without a previous rate; and he may reimburse himself out of the next, made in his own time: And it was made for half a year, whereas it ought not to have been for longer than a month. 2. Here was no refusal by the representative to pay the money. And there can be no distress, without a previous demand and refusal. The refusal was made by *Vesey* who is dead; and by the widow, who was not in fact, tho' she is in the warrant stated to be, his representative. 3. Supposing the rate and warrant to be good; yet the goods of *Vesey* are not distrainable, in the hands of his personal representative, for a rate made upon *Vesey* himself. There is no instance of it, nor any case to support this; therefore it ought not to be supported. Nor is there any necessity for it; for the poor cannot suffer by the non-payment of this money; there are other provisions for raising the money. This is a *casus omisus*. The acts of parliament give no such power

to the justices, as to grant such a warrant; and nothing can be intended in favour of their jurisdiction. It is not the *thing* that is rated, but only the *person*, the occupier; and the statute gives the means of compelling it. The refusal to contribute according to the assessment is treated as an offence, and the *offender* is to be sent to gaol. But the executor or administrator is not an offender. It is a personal charge. An overseer could not bring an action for it, even against the person charged. He must pursue the particular remedy appointed by the act. And if so, the court will never extend the remedy against a representative. If an administrator should pay this rent, he might be guilty of a *devastavit*. And the compulsion by distress will not alter the case, or be an excuse for a *devastavit*.—Mr. Bishop, on the other side, for the justices and parish officers: The court will not now enter into any objection to the *rate*. The only questions therefore are, as to the *warrant*, and as to the assets being distrainable in the hands of the *representative*? As to the demand of the money upon *Fesey* himself, it was made upon him, and is so stated. And as to the demand upon the representative, the end and intention of this special case was to settle the material point, the real question, Whether the goods of the person rated are or are not distrainable in the hands of the representative? The practice is on our side, that they are. It is no answer to say that other people are liable to pay, if the person rated does not: The question is, Whether the representative of the person rated is or is not liable? The authority to make this warrant, and to make the distress in obedience to it, is founded upon the statute of the 43 *Eliz.* which gives the remedy by distress, on refusal to pay. The demand of the money is to be made, and in the present case was actually made, upon the person assessed; and that made it a debt from him. There was no need of a demand upon the representative. The assets were already become liable, and remained so in his hands. As to the danger of a *devastavit*, a representative could not be guilty of a *devastavit*, even by paying a simple contract debt before a bond debt, if he had no notice of the bond debt: And the distress made upon him would be a justification to him for paying it under the compulsion of such distress. I do not say, that the executor or administrator could be sent to gaol, for non-payment of this debt; but yet the assets in his hands are distrainable, as the proper fund out of which it is to be paid; especially as no action would lie for it (as Mr. Norton agrees).—Mr. Norton, in reply: No answer at all has been given to my objection to the *rate* itself. And I say, that even if the administrator

tor were admitted to be liable to pay, yet still there ought to have been a previous demand upon him. No such practice as what Mr. *Bishop* speaks of, is stated in the case; and therefore the court will intend that there is none such. And I believe there is none. I never heard of it before. I take it to be directly the other way. And at all events, the poor cannot suffer; for there are other persons who must make up the deficiency, in case this man do not pay. This is scarce a solvent estate; because the widow has renounced administration, and it is granted to a creditor. This is a charge upon the person, which dies with him: Like costs payable by one who dies; (for which a bill in chancery cannot be revived; and so in this court, upon informations, they are gone by the death of the party;) and the administrator cannot possibly know in what course of administration to pay this rate. If an executor or administrator pays a debt of a lower nature, at that time knowing of others of an higher, it is undoubtedly a *de-vastavit*. And here there may be debts of an higher nature, which the administrator may know of. And if he is obliged to pay it under compulsion, he ought to pay it without compulsion. It is a charge imposed; not a debt. The case was left * open upon its being stated at the trial, to all or any other objections that could be made upon the face of it. There were other debts besides this. — By Mr. J. *Denison*: That makes no difference. The question is stated particularly upon this case; and is confined to the levying the money upon the representative of the person charged. I should think, the event must have often happened in fact and experience. The practice is not stated. But however, the question is, what the law is, and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken, but the particular remedy prescribed by the statute. Therefore clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 *El.* must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay, as an offender. And it gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained by the words of this act, but the goods of the offender himself. I never apprehended, that the goods of the person assessed to the rate can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action

* Mr. *Bishop* denied this.

will lie for taking them. I agree that this is in the nature of an execution: But yet it is personal; and I do not know that it is a *lien* upon the assets.——Mr. J. *Wilmot* concurred; and said, he had no doubt about it. He thought the intention of the special case, which states a particular question, appeared to be, to submit this question only to the court. As to the objections that have been made to the rate; the first is of no great importance: 'For tho' you cannot make a rate to reimburse overseers; yet the overseer may immediately, whilst in office, reimburse himself out of the next money raised for the rate. As to the second, he said, he believed that whatever the law might be, the practice was, not to make these rates monthly. On the merits: It is not stated in the case, that a demand was made even upon *Vesey* (the person assessed), and that he refused payment; tho' it is so recited in the warrant. But that is not material. For I have not the least doubt, but that the representative ought to have been convened before the justices, and asked, what he had to say why he should not pay the rate assessed upon *Vesey* his intestate. This case seems to be like a *scire facias* upon a judgment: Upon which, execution cannot be sued out against the representatives, without asking them what they have to alledge why it should not be taken out. At the time of the teste of the warrant, they were the goods and chattels of the representative. If the teste had been prior to the death, they would have been the goods and chattels of the deceased. But if tested after his death, they are not his goods and chattels, but the goods and chattels of the representative. Therefore if the money had been demanded of the representative, I should have had great doubt, whether this warrant and distress would not have been good. For I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at. For tho' it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And tho' he be called an offender, if he refuse to pay it; yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate;

tho' I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence, to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In a case of *Wallis and Hewit*, at *Guildhall*, at the sittings after *Hilary term*, 5 G. 2. before L. Ch. J. *Eyre*, in an action of trespass, two aldermen of *London* had made a warrant to distrain a man for a poor rate. The man died intestate. But before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal. And then he died. *Eyre* Ch. J. held that a distress could not be made after his death; or if it could, yet the representative ought to have been summoned: And he held the property to be changed. A case was made for the opinion of the court of common pleas: But I could not hear what became of it: L. Ch. J. *Eyre* was a great lawyer. It would be strange, that a distress should be taken upon a man's goods, without hearing him. And it would make great confusion in the administration of assets. He may have paid or retained judgment debts, prior to this distress for the rate.—Mr. *Gould* was retained to take notes for the defendants. But he said, that if Mr. *Norton* insisted upon the want of a demand from the representative, he could not pretend to maintain the case on the part of the defendants.—Mr. J. *Denison* and Mr. J. *Wilmot* said, that this was an essential circumstance. And by the court (L. *Mansfield* Ch. J. and Mr. J. *Foster* being absent) judgment was given for the plaintiff the administrator. *Burr. Mansf.* 1152. *Black. Rep.* 284.

[Note, The arguments in this case are here recited somewhat at large, in order to bring in as much light as may be upon this subject; especially as no other case hath occurred, wherein this point hath been considered. And this particular case, as appears, was determined on its own peculiar circumstances, namely, for want of summoning the administrator. So that the principal point seemeth yet to remain undetermined; which includes in it these particulars: 1. Where the warrant of distress is made out during the lifetime of the person assessed, whether the officers can follow the goods into the hands of the administrator or any other, without taking notice of any person as executor or administrator? 2. Where the warrant of distress is not made out till after the death of the person assessed, whether on summoning the administrator, and refusal by him, the officers can distrain the goods in the hands of

of such administrator? 3. Whether the administrator himself may be assessed in a succeeding rate, as for arrears; and on the assessment being confirmed at the sessions upon his appeal, whether distress may be made as of his own goods, and whether for defect of distress he may be committed? 4. In what course of administration such assessment shall be estimated? And if the administrator shall plead before the justices debts of an higher nature, or insufficiency of assets; whether and how far the justices are to take notice of such plea, and how or in what manner they shall determine the same?]

E. 5 G. K. and Uttoxeter. Upon great debate, and *Certiorari*, search after precedents, it was held, that a *certiorari* would not lie to remove the poor rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniences and delays would follow. *Str. 932. Cases of S. 317.*

E. 7 G. 2. K. and the justices of Salop. The true objection against a *certiorari* is, that if rates were removeable, the poor might be starved whilst the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refused to do it. *1 Sess. C. 201. Str. 975.*

ii. Taxing others in aid.

If the said justices do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums for the purposes aforesaid, then the said two justices (1 Q) shall tax, rate, and assess as aforesaid any other of other parishes, or out of any parish within the hundred, to pay such sums to the churchwardens and overseers of the said poor parish, for the said purposes, as the said justices shall think fit. 43 El. c. 2. s. 3. Hundred contribution.

That the inhabitants of any parish are not able] *H. 8 An.* Order of two-justices: The case was thus: There were two villis in one parish, and the justices recite in their order, that one of the villis was very rich, and the other very poor; and further, that the vill which was rich, did not pay half so much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor

poor vill is uncertain ; viz. because they do not pay half so much as the poor vill does, without shewing that either vill pays any thing to the poor. By the court : As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of *parishes* ; and it is highly reasonable, that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty. *Foley*, 25.

Then the said two justices] *T. 2 J. 2. K. and Griefly.* The *sessions* rated the adjacent parishes : Quashed ; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. *Cases of S.* 259.

The said two justices shall tax, rate, and assess] *T. 12 G. 2.* *St. Mary's and St. Peter and Paul's in Marlborough.* Two justices order the churchwardens and overseers of *St. Peter and Paul's* to assess, raise, and levy a sum towards the maintenance of the poor of *St. Mary's*. But the order was quashed by the court ; because the justices had delegated their power to the churchwardens and overseers ; whereas by the statute they themselves are to make the rate on all, or on particular persons. *Str.* 1114.

In this case, a *mandamus* was moved for to the justices, to make a rate for the support of the poor of the parish of *St. Mary's* ; which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on this clause of the statute ; and thereupon a *mandamus* was granted, directed to the justices ; and as this is a matter of right, they ought to make a return. *16 Vin.* 416.

And the justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. *2 Salk.* 480.

Any other of other parishes] *M. 32 C. 2.* Resolved, That the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb.* 309. *1 Ventr.* 350.

T. 12 G. K. and Boroughsen. There was a taxation of several persons in a parish : Objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable, that several persons in a parish should be charged, and not all, but that the words of the act are very strong ; and did not quash the order for this objection. *Foley*, 29.

Within the hundred] *T. 9 An. Boroughfen and St. John's.* Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole court. *Foley, 27.*

H. 8 An. Motion to quash an order of two justices, which was made to assess the parishes of *St. Stephen and St. Mary Magdalen* in *Norwich*, in aid of the parish of *St. Benedict*, which was not able to maintain its own poor. Objection: These parishes are not in the same hundred; it is in *Norwich* where there is no hundred, so the justices have no jurisdiction. And by *Holt Ch. J.* The order must be quashed. *Foley, 31.*

E. 31 G. 2. K. and the tything of *Milland*. Two justices tax the inhabitants of the tything of *Milland*, in aid of the parish of *St. Peter's Chesehill*, in the same county. The sessions confirm the order, setting forth, that the tything of *Milland*, and the parish of *St. Peter's Chesehill*, both lie in the same liberty of the joke where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, though called by another name. And the court held, they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed. *Burr. Mansf. 576.*

In the case of *K. v. T. Holbeche esq.* and another, it was determined, that county justices cannot rate a parish within their jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction. *Durnf. and East, 4 V. 778.*

As the said justices shall think fit] *E. 12 G. K.* and *St. Mary's* in *Marborough*. An order was made for a neighbouring parish to contribute, *so long as we the said justices shall think fit*. But by the court, It must be quashed; for the discretion that is left in the justices, is as to the quantum, and not as to the duration of the contribution. *Str. 700.*

M. 6 W. K. and *Knightsly*. A sum in gross was taxed upon a neighbouring parish, for a whole year; which was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. *Comb. 309.*

T. 6 G. K. and *Telfcombe*. By the court: The order for the contributory parish to make a rate at 6d. in the pound is ill for incertainty: it should have been, to raise such a sum certain. Quashed. *Str. 314.*

T. 12 G. 2. Case of the parish of *St. Peter and Paul in Malborough*. Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and Paul* to contribute 60*l.* for the maintenance of the poor of the other parish: And objection being made to their ordering such a gross sum, the court held it in that respect to be well. *Str.* 1114.

County contributory.

And if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices at their general quarter sessions shall rate and assess as aforesaid any other of other parishes, or out of any parish within the county. 43 *El. c. 2. f. 3.*

T. 3 G. K. and Percivall. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have inquired whether any parish in the hundred can contribute: The first application to be to two justices, and the second to the sessions. *Parker Ch. J.* I do not see, to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appears, which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred.——*If the said hundred shall not be thought by the said justices able,—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication. Eyre J.* Here are two jurisdictions, that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from an adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. How

iii. How far parents and children are liable to maintain each other.

The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed; on pain of 20s. a month. 43 El. c. 2. s. 7.

Parents and children mutually liable.

Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers, by warrant from two such justices (1 Q.) by distress; or in default thereof any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeitures shall be paid. s. 2. 11.

Father and mother] T. 9 An. Q. and Clenthan. It was moved to quash an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court: The husband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley*, 39.

A man is not obliged to maintain his daughter in law after her mother's death.

E. 10 An. Q. and St. Botolph's Aldgate. The single question was, Whether the husband shall be chargeable to maintain his wife's children by a former husband? and it was resolved, He was, during the wife's life, in her right; but not after. *Foley*, 42.

Nor his wife's children after her death.

There was an order upon the mother, who was married to a second husband, to maintain her children which she had by the former husband: But by the court, a feme covert cannot be charged, but they ought to have charged her husband. *Foley*, 44.

M. 7 G. 2. K. and Dempson. It was moved to quash an order upon the father to pay a certain sum weekly to his son's wife, his son having run away from her as soon as he married her, and she having had a child in the mean time. To this order two exceptions were taken: First, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court,

Son's wife, the son being run away.

that

that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, It was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *K. and Munden* (hereafter following); and the court was of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 *Barnardist.* 329. 364. Note, Sir *John Strange* in his report of this case says, that the order was for the father to maintain the son's wife, after a divorce *a mensa & thoro* for adultery. *Sir.* 955.

Grandfather and
grandmother.

Grandfather and grandmother] *M. 7 C. K. and Reeve.* The reputed grandfather or grandmother are not within the statute; for a bastard is *filius populi*. 2 *Bulst.* 344.

H. 7 Cha. Gerard's case. If a man marries a grandmother, and has an estate with her in marriage; for this estate he shall be charged to be contributory towards the relief and maintenance of the grandchild, within the meaning of the statute: but otherwise it shall be, if he has not any estate or advancement by his marriage with her. By *Whitlocke and Croke J.*—But by *Croke J.* He shall be charged with keeping the grandchild during the life of the grandmother his wife; and if she dies, he shall not be charged after her death. 2 *Bulstr.* 346.

But by *Holt Ch. J.* If the wife dies, he must maintain the grandchildren, though the relation be determined. And he said, that in *Gerard's case*, who married the grandmother of a poor person, though she died, and so the relation was determined, yet the statute was to be construed by equity, and that he was a grandfather within the statute. *Comb.* 321. 405.

But in the case of 2 *Bulstr.* 346. it does not appear that the grandmother was dead; nor is there any resolution, the judges differing in their opinions. 16 *Viner*, 417.

Upon the whole, the distinction seems to be this: If a mother or grandmother marries again; and was before such second marriage of sufficient ability to keep the child, the husband shall be charged to maintain it; for this being a debt of her's when single, shall like others extend to charge the husband; but at her death, the relation being dissolved, the husband is under no farther obligation. 1 *Blackst.* 448.

And though the father be living, yet if he be unable, the grandfather being of ability, may be compelled to keep

keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past. *M. 6 Ann. 2. and Joyce. 16 Vin. 423.*

And children] *T. 5 G. K. and Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pross Ch. J.* The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion, that the son in law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this case. And the order must be quashed. *Str. 190.*

A son in law is not obliged to maintain his wife's mother.

In the case of *Walton and Spark, E. 7 W. Holt Ch. J.* Grandchildren; said, That the word *children* in the statute extends to *grandchildren*; because there is the same natural affection. *Cases of S. 210.*

But no case hath occurred, wherein the same hath been judicially determined. And perhaps there may be some doubt as to this point. Natural affection descends more strongly than it ascends. And it is observable, that whereas the statute of the 39 *Eliz. c. 3.* did only enact, that *parents* and *children* should mutually maintain each other, this statute of the 43 *Eliz.* enlarging this branch, extend it to *grandfathers* and *grandmothers*, but doth not specify *grandchildren*; by which it may seem, that the parliament did not intend, that the obligation should extend to them.

Of every poor, old, blind, lame, and impotent person, or other poor person not able to work] *M. 13 IV. St. Andrews Underbost and Jacob Mendez de Brcta.* The defendant being a jew, had an only daughter, who was converted from judaism, and embraced christianity. Whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20s. a month.

The order must set forth, that the person is poor, &c. and not able to work.

a month. But because they did not alledge that she was poor, or likely to become chargeable, the order was quashed. *L. Raym.* 699.

E. 1 G. K. and Gulley. It was moved to quash an order of sessions. The order set out, that one *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2s. 6d. a week till further order. Objected, It did not appear that she was lame, blind, or unable to work; so that though she was in a destitute condition, it might be because she would not work: And upon this exception the court quashed the order of sessions. *Foley*, 47.

Must be of sufficient ability.

Being of a sufficient ability] *H. 12 An. 2. and Halifax.* Order for the father in law to pay so much a week to his daughter in law, was quashed, because it was not said that he was of a sufficient ability. *Cases of S.* 52.

Indefinite order is good.

In that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell in their sessions shall be assessed] *E. 5 An. Jenkins's case.* An order of sessions was made, that the defendant shall pay 2s. a week towards the support of his father, till that court should order the contrary. Which was held good; because it was indefinite, and no set time limited: and if an estate happened to fall to him, they might apply to the justices; otherwise, if a time was limited. *2 Salk.* 534.

The order must be made by the justices of the county where such sufficient person dwells.

By the justices of that county where such sufficient persons dwell] Therefore if the child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make order. *2 Bulst.* 346.

Pauper not to be sent to such sufficient person.

In their sessions shall be assessed] *T. 9 An. 2. and Jones.* There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole court: They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a week. *Foley*, 41.

Pauper must be chargeable.

And it is said, that in the order of sessions it ought to appear, that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint. *16 Viner*, 424. *K. and Tripping.*

Penalty of 20s. a month.

On pain of 20s. a month ——— to be levied by distress] *T. 32 & 33 G. 2. K. and Robinson.* The defendant was indicted

indicted for refusing to obey an order of sessions, for maintaining his two infant grandchildren. It was moved in arrest of judgment; and urged, that this is a new offence: and where a statute creates a new offence, and gives a particular penalty, and a specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By *L. Mansfield* Ch. J. The rule is certain, that where a statute creates a new offence, by prohibiting and making unlawful any thing which was lawful before, and appoints a specific remedy against such new offence, by a particular sanction and particular method of proceeding; that method must be pursued, and no other: But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding; there, either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute, because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case, a remedy existed before the statute of the 43 *El.* For disobedience to an order of sessions is an offence indictable at common law. So that here are two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made; the other, to distrain for the 20s. penalty after neglect of payment for a month. The former method has been taken in the present case: And there is no doubt but that an indictment will lie for disobeying an order of sessions. And the court were unanimously of opinion, that the judgment ought not to be arrested. *Burr. Mansf.* 799.

• Whereas sometimes men run away, leaving their wives and children, and sometimes women run away, leaving their children upon the charge of the parish, although such persons have some estates which would ease the parish of their charge in whole or in part; It shall be lawful for the churchwardens or overseers, where any such wife, child, or children shall be so left, on application to, and by warrant or order of two justices, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two justices shall order and direct, towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices there, to make an order for the churchwardens or overseers to dispose of such goods

or chattels by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said sessions, of his or her lands and tenements for the purposes aforesaid. 5 G. c. 8. f. 1.

And the said churchwardens and overseers shall be accountable to the justices at the quarter sessions for all such money as they shall so receive. f. 2.

Parents running away, deemed rogues and vagabonds.

And further to compel husbands and parents to maintain their own families, the law hath also provided, that all persons who run away and leave their wives or children, whereby they become chargeable to any parish or place, shall be deemed rogues and vagabonds; and punished as such by the vagrant act of the 17 G. 2. c. 5.

Threatening to run away.

And by the same act, All persons who threaten to run away and leave their wives or children to the parish, shall be deemed idle and disorderly persons; and shall on conviction before one justice, by confession, or oath of one witness, be committed to the house of correction, there to be kept to hard labour for any time not exceeding one month.

Or neglecting to work and provide for their families, deemed idle and disorderly persons.

And whereas several persons by their wilful default and neglect, permit their wives and children to become chargeable to their parish: It is enacted, that if it shall be made appear to two justices, that any such person doth not use proper means to get employment; or if he is able to work, by his neglect of work, or by spending his money in ale-houses or places of bad repute, or in any other improper manner, and doth not apply a proper proportion of the money he earns towards the maintenance of his wife and family, by which they, or any of them, become chargeable to their parish; he shall be deemed an idle and disorderly person, and punished accordingly. 32 G. 3. c. 45. f. 8. (a)

Form of an order to seize the goods, and receive the rents of the lands, of parents or husbands having run away.

Westmorland. { To the churchwardens and overseers of the poor of the parish of _____ in the said county.

WHEREAS it appears unto us whose names are hereunto set and seals affixed, two of his majesty's justices of the peace for the said county, as well upon the complaint and

(a) The manner of which punishment, see title agrants.

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application of the churchwardens and overseers of the poor of the parish of _____ aforesaid, in the county aforesaid, as upon due proof upon oath before us made, that A. O. late of the parish of _____ aforesaid, in the county aforesaid, yeoman, hath gone away from his place of abode at _____ in the parish aforesaid, into some other county or place, and hath left _____ his wife, and _____ their children, upon the charge of the parish of _____ aforesaid, the place of their last legal settlement, and that the said A. O. hath some estate whereby to ease the said parish of their said charge, in whole or in part; We do hereby authorize and command you the said churchwardens and overseers of the poor of the parish of _____ aforesaid, to take and seize _____ and _____ and _____, and to receive the annual rents and profits of the lands and tenements of him the said A. O. at _____ aforesaid, for and towards the discharge of the said parish, for the providing for and bringing up of his said wife and children: And with this warrant you are to appear at the next quarter sessions of the peace to be holden for the said county, and certify them and there what you shall have done in the execution hereof. Given under our hands and seals, at _____ in the said county, the _____ day of _____ in the year _____.

FOR the further maintenance of the poor, there are many fines and forfeitures payable to their use; as for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

And also parts of wastes, woods, and pastures may be inclosed for the growth and preservation of timber and underwood for their relief; as is set forth under the title *Wood*.

V. Of the relief and ordering of the poor.

By the several statutes all along, the poor were to resort or be sent to their own parishes to be relieved; and in the case of *Clypton* and *Ravistock*, *E. 11 Ann.* It was adjudged as follows: There was an order reciting, Whereas *John Saunderson* and his wife are last settled in *Clypton*; these are to order you the churchwardens of *Clypton*, to repair to the parish of *Ravistock*, and to relieve them, being so sick that they cannot be removed. By the court: The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them, *Cases of S. 49.* But in the case of *Darlington* and *Hemlington*,

Poor to be maintained within their own parishes.

H. 17 G. 3. (a) where two bastard children, settled at *Darlington*, resided with their mother as nurse children in the parish of *Hemlington* where the mother was settled, it was determined that the parish where the children's settlement was, should maintain those children in that other parish.

Order to be
taken therein.

By the 43 *El. c. 2.* The churchwardens and overseers, with the consent of two justices (1 *Q.*) shall take order from time to time, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old blind, and such other among them being poor, and not able to work. *s. 1.*

And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid. *s. 4.*

Poor, and not able to work] *M. 3 G. K.* and the inhabitants of *Highbworth*. There was an order to pay 3s. weekly to a poor person, by the parish of *Highbworth*, so long as he shall continue poor. It was objected, that by the statute it ought to appear that they are poor and impotent. *Parker Ch. J.* I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed. *Str. 10.*

On the authority of this case, *E. 3 G. K.* and *Stokebury*, an order was quashed for the same fault. So *E. 4 G. K.* and *Tipper*, an order to maintain a daughter in law. *id.*

Sessions have no
power to order
surgeons bills to
be paid.

For the necessary relief] *E. 1 G. K.* and *Colbitch*. An order of sessions was made upon the overseers of this parish, that they should pay a surgeon his bill for curing certain poor under their care. The court said, that the sessions have no power to make such orders; and so quashed it. 1 *Barnardist. 46.*

M. 6 G. 2. K. and *Woodsterton*. An order was made by two justices upon the officers of the parish of *Woodsterton*, for paying 5l. upon account of a poor inhabitant of that parish when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account; which order was confirmed at the sessions. It was moved to quash these orders. And upon shewing cause it was urged, that the justices have only power to order parish officers to re-

(a) *Ante*, 1 *V.* title *Bastards*; and 3 *V.* title *Poor*, Settlement by birth.

lieve a poor inhabitant where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief. They employed a surgeon, and a nurse, to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. And the court were of opinion that these orders should be quashed. 2 Barnardist. 207. 247.

By the 3 C. 4. *The churchwardens and overseers may, by the consent of two justices (1 Q.) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery, or occupation, only for the setting on work and better relief of the poor.* 1. 22. Setting up trades.

The churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor. 43 El. c. 2. 1. 5. Erecting cottages.

It shall be lawful for the churchwardens and overseers, in any parish, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons, who shall be there kept or maintained. And if any poor person shall refuse to be lodged, kept, or maintained, in such house or houses, he shall be put out of the parish book, and shall not be intitled to receive relief from the churchwardens and overseers. 9 G. c. 7. 1. 4. Overseers may contract for the maintenance and employment of the poor.

The churchwardens and overseers] In the case of *K. v. Beeston*, E. 30 G. 3. On a rule to shew cause why a A majority will bind the rest.
3 B 3 mandamus

mandamus should not issue against one of the overseers of the poor of the parish of *Drayton in Hales*, for refusing to pay his proportion of parish money in his hands to the person who had contracted to maintain the poor; the question was, Whether it was necessary that *all* the churchwardens and overseers should concur in making the contract, or a *majority* of them would bind the rest? It appeared that the churchwardens and overseers, with the consent of the major part of the parishioners or inhabitants in vestry assembled, in pursuance of publick notice for that purpose given, had contracted for the keeping, maintaining, and employing the poor with one *Atherton*, but that three churchwardens and two overseers only agreed to the contract, and one overseer refused to join.—But the *court* ordered the rule to be made absolute to compel that overseer to pay his proportion to *Atherton*. *Durnf. and East*, 3 V. 592.

Paupers waiting relief, and refusing to go into the parish work-house.

M. 7 G. 3. K. and Carlisle. The defendant was indicted for disobeying an order of sessions. The case was, *Jane Carr* the pauper, having been delivered of two bastard children, was taken into the poor house of the parish of *St. Mary's in Carlisle*, which had been there established according to the 9 G. c. 7. There she and her children were maintained for a year and an half. Then the parish officers agreed to allow her one shilling a week, towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor house. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take sixpence a week. But the parish officers persisted in giving her no relief, unless she would come again into the poor house. Whereupon she applied to the general quarter sessions for the county of *Cumberland*; who made an order on the churchwardens and overseers to pay her one shilling a week, towards the maintenance of herself and her two bastard children, until further order. She served the defendant, being one of the overseers, with the order, and demanded payment, which he refused, but at the same time offered (as he had done several times before the obtaining the said order) to take her and her children into the poor house. The question reserved at the assizes for the opinion of the judges was, Whether under these circumstances the defendant was by law impowered to refuse payment of such weekly allowance? And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that under the circumstances

stances of this case, the defendant was by law impowered to refuse payment of such weekly allowance.

M. 11 G. 3. K. against Winslip and Grunwell, overseers of the poor of the township of *Corbridge*, in the county of *Northumberland*. In the said township a regular poor house had been established; and the several persons, who received allowances from the said township, had one month's notice given them to repair to the said poor house, to be maintained and provided for therein; and that from the expiration of the said month, the allowance to the said several persons from the said township should be no longer paid. Afterwards, at a general quarter sessions of the peace holden in and for the said county, an order was made in the words following; that is to say, *Margaret Richlieu* having an allowance of 2s. a week payable to her out of the township of *Corbridge*, of which the sum of 6l. 4s. is now in arrear, it is ordered, that the same be immediately paid to her: And it is also ordered, that the said allowance of 2s. a week be continued to be paid by the said township of *Corbridge* to the said *Margaret Richlieu*; the said township appearing, and not shewing sufficient cause to the contrary. The overseers refused to pay the same, insisting that she should go into the poor house. Upon which they were indicted. And a verdict was given against the defendants the overseers, subject to the opinion of the court of king's bench. Upon hearing the cause, the court thought the general question to be of vast consequence to the system of the poor laws: And *L. Mansfield* expressed an approbation of workhouses. But they gave no opinion upon the merits; holding the sessions order to be bad and illegal upon the face of it: The sessions cannot make such an original order. And judgment was entered for the defendants. *Burr. Mansf. 2677. Cal. Casf. 72.*

H. 20 G. 3. K. and North Shields. By order of a justice, the parish officers of the township of *North Shields* were directed to pay to *Anne Irwin* of that township, wife of *Thomas Irwin*, the sum of 2s. 6d. weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one fourteen months. The parish officers appealed to the quarter sessions, where the order was confirmed, and a special case stated to the following effect: There was, at the time of making the order, within the township, a poor house, established according to the statute 9 G. c. 7. into which the parish officers were willing to receive the pauper, with her three children, and offered so to do; but she refused to go with her said three children, who were of the ages mentioned in the order. She had

another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself, nor was there any order for her. Her husband was a mariner, and prisoner in *France*, and his said wife not able to provide for the said three children. The case concluded, that these children, being nurse children, the opinion of the court was, that they ought not to be separated from their mother; and that the mother, not seeking relief herself, was not compellable to go into the workhouse.—Upon a *certiorari*, and a rule to shew cause why both the orders should not be quashed, it was argued, in support of the rule for quashing them, that the statute of 9 G. c. 7. s. 4. was to secure to parishes a benefit from the labour of persons asking relief. If parents receive assistance for the maintenance of their children, *that* in truth is a relief to them. The case therefore states improperly, that the wife had not asked relief for herself; she did *virtually*, by asking it for her children, whom she, if able, was bound to maintain. And the case of *K. and Carlisle* was relied on as in point. On the other side, it was contended, that as the mother had not asked relief for herself, and the order was only for the support of her children, she was willing to let *them* go into the workhouse; and although nurse children cannot be separated by any compulsory order from their mother, she may by her consent permit the separation if she thinks it for their advantage. In the case of *K. and Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute.—*L. Mansfield* was not present during this part of the argument. *Willes J.* said this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *K. and Carlisle*. *Abhurst J.* thought the act extends to the present case: That maintenance for the children was relief to the mother. There might be great inconvenience if the court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the workhouse, idleness would be thereby promoted among artificers and manufacturers. *Buller J.* on the contrary, thought the distinction between this case and that of *K. and Carlisle* to be clear. The act was meant in case of parishes, but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the pa-

rich is not entitled to the labour of a whole family, because one of them might want relief.—The case stood over for further argument, *Willes J.* expressing a wish that it might be compromised. And now he delivered the judgment of the court: We think it unnecessary to give an opinion on the question which has been argued in this case, because I and my two brothers are satisfied that no appeal lies from an order of maintenance. The statute 3 *W. c. 11. s. 11.* gives a concurrent jurisdiction, in the making orders for the relief of the poor, in or out of sessions, and doth not authorize an appeal. The act of 9 *G. c. 7.* made no alteration in this respect. The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense. We have spoken to several gentlemen very conversant in sessions law, and none of them ever heard of such an appeal.—And the order of sessions was quashed (because they had no jurisdiction), and the original order affirmed. *Douglas, 316. Cal. Caf. 68.*

[Upon this Mr. *Douglas* observes, that the words of the 3 *W. c. 11.* are, “by authority under the hand of one justice residing within the parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions.” This, he says, should seem, must mean by order of the court of quarter sessions, not of justices, as individuals, when they happen to meet at the quarter sessions. Therefore he makes a query concerning the case of *K. against Winslip and Grunwell*, where the court is stated to have held, that the sessions could not make an original order of maintenance.—Unto which it may be added, with respect to this last case of *North Shields*, that the great fundamental statute of 43 *El. c. 2. s. 6.* enacts, that, “if any person shall find himself aggrieved by any thing done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may appeal to the general quarter sessions, whose order therein shall be final.” Which, by the rule that acts in *pari materia* are to be taken together, and considered as one entire act, may seem to include this case concerning the order of maintenance. The *Carlisle* case above mentioned was upon an original order at sessions, in which the jurisdiction was not objected to, but the cause was determined on the real merits. The case of *K. against Winslip and Grunwell* also was upon an original order of sessions, which order the report says was quashed, because the court was of opinion that the sessions had no power to make such order. This present case of *North Shields* was on appeal against an order of a justice out of sessions, and in this case of appeal likewise the court was of opinion that

Observations on
the above cases.

the

the sessions had no jurisdiction. From which two last cases it seems to follow, that an order of maintenance by a private justice out of sessions is absolutely conclusive; which imports a power in this respect not usual in other like cases; especially as such justice is required by the statute to be an inhabitant of the parish if any such be there residing, and consequently in all probability essentially interested in the poor rate. As to the matter of *practice*, it is certain, that nothing is more common at the sessions, than applications for the maintenance of poor persons, as well by original motion, as by way of appeal from the orders of private justices. In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind; as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alledged against removing the poor rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, doth not hold with regard to appeals against orders of maintenance. The justices order takes effect immediately, and continues in force till altered by other legal authority. The usual way is, for the justices to order the overseer to pay to the pauper so much weekly or otherwise, *until he shall be otherwise ordered according to law to forbear the said allowance*, or, more generally, *till further order*. And this, if not acquiesced in, brings on an appeal to the sessions; where the court enlarges, mitigates, or takes off the charge, as they shall see cause.]

No more of a family than those which want relief, are obliged to go into the workhouse.

And finally, in the case of *K. v. James Haigh* and another. The defendants (the churchwardens and overseers of *Shelf* in the West Riding of *York*) were indicted for disobeying an order of a justice for the payment of a weekly sum to *Mary Gray* for the maintenance of her bastard child.—At the trial before *Buller J.* at the *York* assizes, it appeared that the mother applied for relief for her child only; and the question was, Whether the defendants were bound to obey the order, as the mother of the child refused to go into the workhouse? A verdict was taken for the prosecutor, subject however to be set aside, and to have a verdict of acquittal entered, in case the court should be of opinion that under these circumstances the defendants were not bound to obey the order.—*Wood*, and *J. P. Heywood*, for the prosecutor, relied on the opinions of *Wilkes J.* and *Buller J.* in *K. v. North Shields* above, as decisive.—*Chambre* and *Wickham*, for the defendants, mentioned the case of *K. v. Carlisle*, where all the judges were of opinion

that

that the mother's refusal to go into the workhouse justified the parish officers in refusing payment of the sum ordered; and even if this question had not been determined, the inconveniences attending a contrary decision ought to be considered; for in such a case the parents themselves would be idle, while the children were maintained at the expence of the parish. It was the object of the legislature throughout the whole system of the poor laws to give authority to the parish officers over the whole of a family, when any of them are unable to support themselves; and under the words "*poor persons*" are comprehended all the constituent and dependent parts of the family. For when relief is administered to a child it is in effect given to the parent. In *K. v. St. Mary Walsport*, where a question arose whether the whole of a certificated family might be removed when one of them asked relief, *L. Kenyon* said that the word "*family*" was explained in another clause of the same act to comprehend "*the wife and children of such person cohabiting in the same house.*"—*L. Kenyon* Ch. J. The only question is, For whom was the relief asked? For such person only is, according to the terms of this act, to be sent to the workhouse. It is stated that the *child* only wanted relief; the application was indeed made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is therefore very distinguishable from the case of *K. v. Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act, if, when all the children of a family (except one) were capable of supporting themselves, and that one were unable, either from the want of reason, or of the use of its limbs, to maintain itself, and were under the necessity of receiving relief, the whole family were to be sent to the workhouse. Such a law would not only be repugnant to all ideas of mercy and humanity, but would also be prejudicial to the interest of the parish, who would in some measure be deprived of the benefit of the labour of such of the family as were able to work; for they could earn much more out of the workhouse than in it.—By the court: Judgment for the prosecutor. *Durnf. and East*, 3 V. 637.

By 30 G. 3. c. 49. Any justice of the peace, (or physician, surgeon, apothecary, or officiating clergyman of the parish or place, authorized by a warrant from one justice,) may in the day-time visit any parish work house, or house kept or provided for the maintenance of the poor of any parish or place within the county or division wherein such justice

Justices, &c.
may visit parish
workhouses.

justice shall reside, and examine into the condition of the poor people therein, and the condition of such house; and if any cause of complaint shall be found, such justice, or person authorized as aforesaid, may certify the state and condition of such house, and of the poor therein, and of their food, cloathing, and bedding, to the next sessions for the county or division where such house is situate, under his hand and seal; and such justice, or other person authorized as aforesaid, shall cause the overseers of the poor, or master or governor of such house, to be summoned to appear at such sessions to answer such complaint, who, on hearing the parties, may make such orders and regulations for the removing such cause of complaint as to them shall seem meet, and all the parties shall abide by the same. *f. 1.*

Provided, that in case such justice, or person authorized as aforesaid, shall, upon such visitation, find any of the poor afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then, if such visitation be made by a justice, he shall apply to another justice of such county or division, and certify to him the state and condition of the poor in such house; or if such visitation is made by such other persons authorized as aforesaid, they shall apply to two justices of such county or division, who may make such order therein under their hands and seals as they shall think proper until the next sessions, at which sessions they are to certify the same under their hands and seals, who are to make such order for the further relief of the poor in such house as to them shall seem meet. And the charges of relieving such poor shall be paid out of the poor rate of such place, in such manner as such sessions shall direct. *f. 2.*

Provided, that the above shall not extend to workhouses regulated by any special act of parliament. *f. 3.*

On an order for relief weekly, the money is due the beginning of the week.

T. 26 G. 3. K. v. John Fearnley. This was a demurrer to an indictment found against *Fearnley*, who was overseer of the poor of the township of *Checkbeaton*, for disobeying an order of two justices, for the payment of 1 s. 6 d. a week to *Sarah Firth* for the maintenance of herself and her bastard child. One objection was; there was a mistake in the caption of the sessions where the indictment was found, the word *July* being inserted instead of *October*, which the court adjudged to be fatal. It was also objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the court were of opinion,

opinion, that the sum which was ordered to be paid weekly, was due at the beginning of the week. *Cas. by Durnf. and East, 316.*

And where any parish or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, townships, or places, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of the peace dwelling in or near any such parish, township, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes, townships, or places so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed; and if any poor in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not intitled to ask relief:

Two or more places may join

And it shall be lawful for the churchwardens and overseers of any parish, township, or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township, or place, where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, township, or place, for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and if any poor person of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be intitled to have relief: Provided, that no poor person, his apprentice, or child, shall acquire a settlement in the parish, town, or place, to which he shall be removed by virtue of this act; but his and their settlement shall be and remain in such parish, town, or place, as it was before removal. 9 G. c. 7. s. 4.

T. 22 G. 3. K. v. St. Peter and St. Paul in Bath. William Hill was removed from Lyncombe and Widcombe to St.

St. Peter and St. Paul. The sessions confirmed the order, and stated the following case :—That the parishioners of *St. Peter and St. Paul* in conjunction with the parishioners of *St. James in Bath*, purchased a piece of ground in the parish of *Lyncombe and Widcombe*, and built thereon a house for the reception and maintenance of their poor. And the said *William Hill* together with the rest of the paupers belonging to the said parish of *St. Peter and St. Paul* removed to the said house, where they have been maintained ever since, without any charge to the said parish of *Lyncombe and Widcombe*. The said *Hill* and all the other paupers carried with them regular certificates, which were delivered to the parish officers of *Lyncombe and Widcombe*. Notwithstanding which the pauper was removed from *Lyncombe and Widcombe*, though he had not been chargeable to that parish.—The sessions confirmed the order, being of opinion, that the pauper was not an object of the certificate act, and consequently not protected by it.—*Howorth* and others shewed cause in support of these orders.—*L. Mansfield* (without hearing the other side) said, To be sure it was a radical defect in the system of the poor laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of industry, vigour, and skill, a man who could not find work at home, was prohibited from seeking it abroad. The legislature endeavoured to cure this evil by introducing certificates, under which the pauper is at liberty to go and reside wherever he pleases. And the true principle is, to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was however soon felt as an inconvenience; they were, not long after, introduced by the legislature; and if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor rates one half. But this benefit could not within itself be received by every separate district; for where parishes were small, the expence of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings within their own limits, yet, where two unite, no restrictions were imposed, the power is general. It is obvious, that the workhouse of a single parish must be

most

most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act therefore authorizes the purchase any where; and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expence, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorizes the whole body of the poor, of whatever denomination and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitancy, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*.—*Buller J.* As to the last difficulty raised, I doubt whether the poor house so occupied, and become in this manner the perpetual property of the united parishes, is not to this purpose rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle as that of many resolutions in the case of such children born in gaols.—*Willes and Ashurst J's.* concurring, both orders quashed. *Cal. Cas.* 213.

There shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registered, with the day and year when they were first admitted

Persons relieved to be entered in a book.

to have relief, and the occasion which brought them under that necessity, and yearly in Easter-week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection. 3 W. c. 11. s. 11.

No others to be relieved, but by order of the justices.

And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of one justice residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small pox, for such families only as shall be therewith infected. 3 W. c. 11. s. 11.

And no justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other publick meeting, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. 9 G. c. 7. s. 1.

And the person whom such justice shall think fit to order to be relieved, shall be entered in such book, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person who is not registered in such book, as a person intitled to receive collection, on pain of 5l. by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices. 9 G. c. 7. s. 2.

Persons relieved to be badged.

Moreover, Every such person as shall be upon the collection, and receive relief of any parish or place, and the wife and children of any such person cohabiting in the same house (such child only excepted, as shall be by the churchwardens and overseers permitted to live at home, in order to attend an impotent and helpless parent) shall upon the shoulder of the right sleeve of the uppermost garment, in an open and visible manner, wear a large Roman P, together with the first letter of the name of the parish or place, whereof such poor person is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overseers shall be directed: And if any such poor person shall neglect or refuse

refuse to wear any such badge or mark, it shall be lawful for one justice to punish such offender, either by ordering his allowance to be abridged, suspended, or withdrawn, or otherwise by committing him to the house of correction, to be whipt and kept to hard labour, not exceeding 21 days: And if any churchwarden or overseer shall relieve any such poor person, not wearing such badge, and be thereof convicted on oath of one witness before one justice, he shall forfeit 20 s. by distress, half to the informer and half to the poor. 8 & 9 W. c. 30. s. 2.

By the 24 G. 2. c. 43. No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor; as is set forth more at large, in the article relating to spirituous liquors, under the title Excise.

Spirituous liquors not to be used in workhouses.

THE above-mentioned statute of the 9 G. c. 7. hath been very beneficial in practice; but the matter seemeth at length to have been carried too far; the overseers in many places having found out a method of contracting with some obnoxious person, of savage disposition, for the maintenance of the poor: Not with any intention of the poor being better provided for, but to hang over them *in terrorem*, if they will not be satisfied with the pittance which the overseers think fit to allow them. And one such taskmaster oftentimes undertakes for the poor of several parishes or townships. But the justices have power, by withholding their assent, to prevent any bad use being made of this kind of traffick.

Oath of a poor person wanting maintenance.

A. *P. of ——— in the parish of ——— in the county of ——— maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that on ——— last he did reply for relief to the parishioners of the said parish at a vestry (or other publick) meeting, [or, to two of the overseers of the poor of the said parish] and was by them refused to be relieved.*

A. P.

Taken and made before me one of his majesty's justices of the peace for the said county, the ——— day of ———

J. P.

Warrant thereupon to summon the overseers.

Westmorland. { To the constables of — in the parish
of — in the said county, and to
every of them.

WHEREAS A. P. of your parish hath this day made oath before me — one of his majesty's justices of the peace in and for the said county, that he the said A. P. is very poor and impotent, and not able to provide for himself and his family; and that he the said A. P. did on — last apply to the parishioners of your said parish at a vestry (or other publick) meeting [or, to A. B. and C. D. two of the overseers of the poor of the said parish] and was by them refused to be relieved: These are therefore to require you in his said majesty's name, to summon two of the overseers of the poor of the said parish, to appear before me on — next at the house of — in — in the said county, at the hour of — in the forenoon of the same day, to shew cause why relief should not be given to the said A. P. And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the — day of — in the — year —.

Order for maintenance.

Westmorland. **W**HEREAS A. P. of — in the parish of — in the said county of — hath made oath before me — one of his majesty's justices of the peace for the said county, that he the said A. P. is very poor and impotent, and not able to work; and that he the said A. P. did on — last apply for relief to the parishioners of the said parish of — at a vestry (or, publick) meeting, [or, to A. B. and C. D. two of the overseers of the poor of the said parish,] and was by them refused to be relieved: And whereas A. B. and C. D. overseers of the poor of the said parish, have been duly summoned by me, to shew cause why relief should not be given to the said A. P. and have appeared before me in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid, [or, but have made default to appear before me according to such summons:] I do therefore hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay unto the said A. P. the sum of — weekly and every week, for and towards his support and maintenance, until such time as they shall be otherwise ordered according to law to forbear the said allow-

allowance. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year ———.

Contract for maintenance:

AT a publick meeting of the inhabitants of the parish of ——— in the county of ——— for that purpose assembled upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the said parish, of the one part, and A. M. of ——— in the said parish, yeoman, of the other part: That he the said A. M. shall and will during the space of one whole year, to commence from ——— next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people, as shall be lawfully intitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance: And that in consideration thereof the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. the sum of ——— in equal proportions. ——— The said A. M. to have moreover and take unto himself the benefit of the said poor people's work, labour, and service during the said term. In witness whereof the parties to these presents have hereunto set their hands, the ——— day of ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *clothing*; setting forth in what condition they shall go, and in what condition be delivered back again.

As also, if they shall *die*; who shall be at the expence of burying them, and the like.

As also, if they shall be *refractory* or ungovernable; who shall be at the charge of sending them to the house of correction, or otherwise reducing them to good behaviour.

And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract, the consent of a justice of the peace; as thus,

— by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of J. P. esquire, one of his majesty's justices of the peace for the said county, dwelling in the said parish of — [or, near to the said parishes or townships of —.]

And the assent of the said justice may be indorsed thereon, as follows:

I — esquire, one of his majesty's justices of the peace for the within mentioned county of — and dwelling in the within mentioned parish of — [or, near to the within mentioned parishes, or townships of —] do consent unto, allow, and approve of the within written contract. Given under my hand and seal the — day of —.

VI. Of the overseers account.

'Account.

By the 43 El. c. 2. The churchwardens and overseers shall within four days after the end of their year, and other overseers nominated, make and yield up to two justices (1 Q.) a true and perfect account of all sums by them received, or rated and assessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office; and such sums of money as shall be in their hands, shall pay and deliver over to their successors: And the subsequent churchwardens or overseers, by warrant from two such justices, may levy by distress and sale of the offender's goods, the said sums or stock which shall be behind on any account to be made; and in default of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprize, until payment of the said sum and stock: And also any such two justices may commit to the said prison every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands. s. 2. 4.

And by the 17 G. 2. c. 38. It is enacted as follows: The churchwardens and overseers shall yearly, within fourteen days after other overseers shall be appointed, deliver in to the succeeding overseers a just account in writing, fairly entered in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received; and also of all materials that shall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid

paid by such churchwardens and overseers so accounting, and of all other things concerning their office; and shall also pay and deliver over all sums of money and other things, which shall be in their hands, to the succeeding overseers; which account shall be verified by oath before one justice, who shall sign and attest the taking of the same, at the foot of the account, without fee; and the said books shall be preserved by the churchwardens and overseers in some publick or other place within the parish or township; and they shall permit any person assessed, or liable to be assessed, to inspect the same at all seasonable times, paying 6d. for such inspection; and shall upon demand give copies at the rate of 6d. for every three hundred words, and so in proportion. And if they shall refuse or neglect to make and yield up such account verified as aforesaid, within such time, or shall refuse or neglect to pay over the money and other things in their hands; any two justices may commit them to the common gaol, till they shall have given such account, or shall have paid and yielded up such money and other things in their hands as aforesaid.
l. 1, 2.

Churchwardens] M. 15 C. 2. K. and Pecke. The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concerned his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden.
1 Keb. 574.

Churchwarden may be punished as an overseer.

Such money as shall be in their hands, shall pay and deliver over to their successors] M. 8 G. 2. K. and the justices of Somersetshire. *Mandamus* to the justices, to grant a warrant for levying 30*l.* 17*s.* 11*d.*, being the balance of the last overseers account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the court: There must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry to dispense with the statute. *Str. 992.*

Balance must be paid over.

Overseer be-
coming a bank-
rupt.

T. 26 G. 3. K. and Eggington. The defendant had received as overseer of the poor 4l. previous to his becoming a bankrupt, which was on the 5th *December* 1785; but his accounts were not made out till the *Easter* following; and he had afterwards been committed to gaol by two justices for not paying over the 4l. as the balance of his account.—*Erskine* moved for a rule to shew cause why he should not be discharged, on the ground that this sum was *debt existing previous to the bankruptcy*, and might have been proved under the commission, and the defendant had since obtained his certificate. And he insisted, that when the accounts were delivered in, it appeared that this sum was received antecedent to the bankruptcy, and might have been ascertained by any parishioner, so as to have enabled him to prove it under the commission.—*L. Mansfield*: This money was deposited in the defendant's hands for the use of the parish, which they had no right to call for till a fortnight after *Easter* 1786; therefore till that time he was entitled to retain it. But this debt only arises upon the defendant's conversion of it to his own use, which is not till after the bankruptcy. Therefore the defendant is not entitled to be discharged.—*Buller J.* This motion can only be sustained on the ground that the parishioners had a cause of action against the defendant before his bankruptcy; but at that time they could not have sued him for this debt: And even if this sum had been kept by itself, the bankrupt's assignees could not have touched it: The defendant was a mere trustee for the parish, and I cannot think that his bankruptcy discharged him from his office of overseer.—Rule discharged. *Cas. by Durnf. and East*, 369.

Two justices
may enforce
payment of
the balance after
appeal.

E. 31 G. 3. K. v. Sir J. Carter and others. On an appeal against the allowance of the accounts of Mr. *Read*, an overseer of *Fareham, Southampton*, the sessions disallowed several items in the account, amounting in the whole to 42l. 7s. 1d.; but the order of sessions did not proceed to direct Mr. *Read* to pay that sum over to the succeeding overseers. On Mr. *Read*'s subsequent refusal to pay over this sum, an application was made to two of the defendants, as magistrates, desiring them to enforce payment under the 43 *El. c. 2. s. 2.* and 4 and 17 *G. 2. c. 38. s. 3.*; but those gentlemen, conceiving they had no authority to act, declined to interfere; whereupon a rule was obtained requiring them to shew cause why a *mandamus* should not issue, to compel them, or any two of them, to receive and proceed on the complaint against Mr. *Read*, for refusing to pay over the balance in his hands.—*Burrough* now shewed cause;

cause; contending that the magistrates had no jurisdiction, as this case had been before the sessions, who had made a judicial order upon the subject. The 43 *El. c. 2. s. 2. 4.* directs the overseers to pay over the balance in their hands to their successors in 4 days; and in default thereof enables two magistrates to levy the sum due by distress and sale of the offender's goods, or to commit him to prison. The 17 *G. 2. c. 38. s. 3.* only enlarges the time of paying the balance to 14 days; giving the justices the same power to commit the defaulters to prison, and omitting the levying the balance by distress and sale. And under both statutes an appeal to the sessions is given against the allowance of the accounts. But the power of the magistrates is confined to cases where there is no appeal. Here the prosecutor chose to appeal to the sessions; and therefore he should pursue that remedy by sessions process. And these magistrates, acting out of sessions, have no power under either of these statutes to compel the payment of the balance of this account.—*L. Kenyon Ch. J.* (stopping *Portal* on the other side) said, It seems to me that these justices have jurisdiction in this case. The effect of the appeal was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance (a) —*Grose J.* These are as much arrears now as they were before the appeal; only the quantum is ascertained. Rule absolute. *Durnf. and East, 4 V. 246.*

Until he have made a true account] T. 2 W. The mayor and churchwardens of Northampton. The mayor committed the churchwardens, as overseers of the poor, for refusing to account; and the warrant of commitment concluded, *until they be duly discharged according to law.* The court held the commitment void; because the warrant ought to conclude, *there to remain until they shall account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy: for in the first case, the commitment must be until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. *Cartb. 152.*

Commitment until they account.

Which account shall be verified by oath before one justice] H. 19 G. 2 K. and the justices of Middlesex. A *mandamus* was moved for, to be directed to the justices to swear *Wil-*

Justice refusing to swear an overseer to his account.

(a) *Asheburß* and *Buller J.* absent.

iam Carr, late overseer of the poor of the parishes of *St. Andrew* and *St. George the Martyr*, to the truth of his account, upon an affidavit made by *Carr* that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. On behalf of the justices, it was objected, that the account consisted of gross sums, and that the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account. By the court: A *mandamus* is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the *mandamus*. 1 *Wilson*, 125.

And if any person thinks himself aggrieved by the account, he may have his remedy by appeal.

Books to be delivered to the new overseers.

And the said books shall be preserved by the churchwardens and overseers] T. 24 & 25 G. 2. K. and Clapham. A *mandamus* was granted to oblige the old overseer to deliver over the books of the poor rates to the new overseer; for, by the court: They are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer and churchwarden for the time being ought to have the custody thereof. 1 *Wilson*, 305.

Overseers removing or dying.

And if any overseer shall remove, he shall, before his removal, deliver over, to some churchwarden or other overseer, his accounts, verified as aforesaid, with all assessments, books, papers, money, and other things concerning his office; and if any overseer shall die, his executors or administrators shall, within 40 days after his decease, deliver over all things concerning his office to some churchwarden or other overseer, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid. 17 G. 2. c. 38. s. 3.

Appeal against the account.

By the 43 *El.* c. 2. *If any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties.*

And this power of appealing generally, doth not seem to be taken away by the statute here next following; but the same being only in the affirmative, it seemeth that they may both stand together, and that the appeal may be upon either of the statutes.

And upon this statute of the 43 *El.* the appeal is not limited to the next sessions, but may be at any time after.

The other statute above-mentioned, with regard to this matter, is as follows: *If any person shall have any material*
objec-

objection to such account or any part thereof, he may, giving reasonable notice, appeal to the next sessions; but if reasonable notice be not given, then they shall adjourn the appeal to the next sessions after; and the court may award costs to either party, as in cases of settlement by the 8 & 9 W. 17 G. 2. c. 38. s. 4.

So that here is a power to award costs, if the appeal is to the next sessions; but if the appeal is upon the 43 *El.* and not to the next sessions, there is no power in such case to award costs.

And by the said statute of the 17 G. 2. c. 38. *In all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. s. 5.*

M. 4 Ann. 2. and Hedges. On appeal upon the statute of the 43 *El.* against the allowance of the account by two justices, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court: They should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do. 3 *Salk.* 533.

Balance to be levied by distress.

T. 7 G. K. and Bartlett. An order made at the sessions relating to accounts of overseers, was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the disbursements *and the allowance thereof*, which the court will presume was regular. But by the court: It doth not follow, that this was an allowance by two justices, for the parish might do it; and therefore for want of jurisdiction this order must be quashed. *Str.* 983.

Accounts must be allowed by justice before the appeal.

Allowance of the account.

Westmorland. **P**ERUSED and allowed (having been first signed and verified on oath by A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor) by me one of his majesty's justices of the peace in and for the said county, the — day of —. J. P.

VII. Penalty of overseers for the neglect of their duty.

In general overseers being negligent in their office, shall be forfeit for every default, 20s. to the poor, to be levied by one

one of the churchwardens or overseers, by warrant of two justices (1 Q.) by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprize, till the said forfeiture shall be paid. 43 *El. c. 2. s. 2. 11.*

Penalty of 40s.
and not exceed-
ing 5l.

And by the 17 *G. 2. c. 38.* Any parish officer neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two calendar months after the offence committed, shall forfeit not exceeding 5l. nor less than 40s. to the poor, by distress. *s. 14.*

Witnesses,

And in all actions to be brought in the courts at *Westminster*, or at the assizes, for the recovery of any sum mispent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted. 3 *W. c. 11. s. 12.*

VIII. Indemnity of overseers in performance of their duty.

May plead the
general issue.

By the 7 *J. c. 5.* If any action shall be brought against any *justice of the peace* or *constable* (and by 21 *J. c. 7.* against any *churchwarden* or *overseer of the poor*, or other person who in their aid or by their commandment shall do any thing concerning their offices), he may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs. And such action shall be laid in the county where the fact was committed, and not elsewhere.

Double costs.

Treble damages
and costs.

By the 43 *El. c. 2.* Persons sued for any thing done on that act, may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit. *s. 19.*

No action to be
brought until a
copy of the war-
rant hath been
demanded and
refused.

And by the 24 *G. 2. c. 44.* No action shall be brought against any *constable*, *headborough*, or *other officer*, or any person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand; and if after compliance therewith, any such action shall be brought,

brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and such constable, headborough, or other officer, or person acting in his aid as aforesaid; then on proof of such warrant, the jury shall find for the defendant. And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid,

E. 13 G. 3. *Jackson's case*. An action of trespass was brought by the plaintiff against the overseers of the poor for taking his gelding. They alledged, that by virtue of their office, and in pursuance of a justice's order, they levied satisfaction for a poor rate, which was the trespass complained of. It was objected on the trial, that by the statute of 24 G. 2. c. 44. demand should have been made of the perusal and copy of the justice's warrant, and six days neglect or refusal. And the judge who tried the cause being of the same opinion, the plaintiff was nonsuited. It was moved for a rule to shew cause why the nonsuit should not be set aside. Against the rule it was argued, that this act of 24 G. 2. was a remedial act, and to be construed so as to suppress the mischief, and advance the remedy. That the mischief was, that justices of the peace were often insnared by surprize on some little inadvertency into which they had fallen; that the remedy was, giving them a power to rectify that inaccuracy or mistake; so as neither the person affected by it might suffer, nor the justice be vexatiously harassed. That in order to this, notice is required by the statute, to give the party a power of tendering amends, bringing money into court, or pleading as he shall be advised. That *constables* and *headboroughs* are likewise by the said act of 24 G. 2. not to be proceeded against, without demand and perusal of the warrant. That *churchwardens* and *overseers of the poor* are within the same reason, and therefore within the remedy. That, after *constables* and *headboroughs*, are added, *other officers*. By L. *Mansfield* and the court: They are clearly within the act of 24 G. 2. The justices warrant is the authority under which they act. To extend the benefit of the statute of 21 J. was the intent of the statute of 24 G. 2. and all officers acting under a justice's warrant are included in it. *Loffi. 249.*

Some account of the act of 22 G. 3. c. 83. for the maintenance of the poor by incorporated societies.

Restrictions of
the said act.

1. **G**ENERALLY, nothing in this act shall extend to any parish, township, or place which shall not agree to adopt the provisions herein contained.

Uniting for the
purposes of this
act.

2. In order to which agreement, whenever two parts in three in number and value of the owners or occupiers, according to their poor rate, within any parish, township, or place, shall at a public meeting signify their approbation of the provisions herein contained, and shall at such meeting nominate to the justices three persons qualified for guardians, and three others for governors of the poor house, and fix salaries to be paid to them, and shall procure the consent of two justices within that division to such agreement and salaries; they shall from that time be entitled to the benefits of this act. *f. 3.*

In like manner, two or more parishes, townships, or places, may unite for the purposes aforesaid.—Provided, that no parish, township, or place, distant more than ten miles from such poor house, shall be permitted to unite with the parishes or places which shall establish such poor house. *f. 4, 5.*

Meetings to be
held.

3. Which notice for such meetings, and for every other public meeting under this act, shall be given in the church three *Sundays* before; and none shall vote at such meeting, unless he be owner or occupier of lands assessed to the poor rate after the rate of 5*l. per annum* at the least; nor shall any person vote as occupier unless he shall be assessed to such poor rate. *f. 6.*

Power of the
guardians.

4. And where guardians are appointed, neither churchwarden nor overseer shall intermeddle in the care and management of the poor; but the guardian shall be invested with all powers given by any act of parliament to the overseers of the poor, and in all respects, except in regard to making and collecting the rates, shall be an overseer; but the churchwardens and overseers shall continue to be liable to collect the poor rate, and shall pay the same to the guardian; or if two parishes or places be united, they shall pay over their quotas respectively to the treasurer of such united district. *f. 7, 8.*

And all notices or applications directed by any act of parliament to be given or made to the overseers, shall be given and made to the guardians; but if any orders of removal or notices shall happen to be given to the churchwarden or overseer, the same shall be valid, and the churchwarden

warden or overseer shall deliver the same to the guardian.

f. 7.

Provided, that nothing herein shall extend to alter or affect the settlement of any person ; or to give to any illegitimate child born in a poor house or work house established under the authority of this act, a settlement in the parish or place where such house shall be (but such child shall be considered as settled in the parish or place to which the mother belongs); or to alter the regulations established by any act of parliament for any particular house of industry in any part of this kingdom. f. 39.

5. In like manner a visitor shall be appointed, who may appoint a deputy. The said visitor or deputy to superintend every such house, to settle all doubts concerning the persons who are to be sent thither, to enforce the rules and regulations for the better accommodation and relief of the poor, and to settle accounts between guardians and treasurer. And for an inducement for undertaking the office, the visitor or deputy shall be freed from the office of constable, and all parochial offices, and from serving upon juries, whilst he continues in such office. f. 10, 11.

Visitor appointed.

6. And the guardians shall recommend to the justices a treasurer, who shall appoint him accordingly ; which treasurer shall account before the guardians at every meeting, and shall once a year make out an account of the expences attending the poor house, and of the number of poor persons, distinguishing their age and sex, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding, to be laid before the visitor, and if by him approved, shall be transmitted to the clerk of the peace, and by him laid before the sessions : and such treasurer shall be allowed an annual salary not exceeding 10l. as the visitor shall appoint. f. 12.

Treasurer.

7. The justices shall also appoint a governor of each poor house ; who may, upon proof of misbehaviour or incapacity, be removed by the visitor or guardians. f. 9.

Governor.

8. The offices of guardian, governor, visitor, and treasurer, shall determine in *Easter* week yearly, on the day on which the public meeting for the purposes of this act shall be held. f. 14.

Officers how long to continue.

In the intermediate time, if any vacancy shall happen in any of the said offices, by death, resignation, or removal ; meetings shall be called as soon as conveniently may be, and the vacancies filled up in the manner before mentioned. f. 13.

9. The guardians shall provide houses, with proper buildings and accommodations, either by erecting new ones

Houses to be provided.

ones on land to be purchased or rented by them, altering old ones, or hiring buildings for the purpose ; and fit them up with the advice of the visitor, at the proportionable expence of the several places respectively. *f.* 17.

Provided, that the poor house shall be situate within the respective parish or township, or if several be united, then within one of the parishes or townships so united ; and not elsewhere, without the consent of three parts in four in number and value as aforesaid. *f.* 18.

And the guardians, with the approbation of the persons qualified as aforesaid, may sell any house erected or purchased for the poor of such place, and also by order of a justice, may remove the person or persons who shall inhabit the same, or any other house provided at the expence of such parish or place, if they shall refuse to quit after 14 days notice. *f.* 43.

The houses to be hired shall be taken for not more than 21 years nor less than three ; and shall be free from all parochial and parliamentary taxes, except such as they were liable to at the time of taking thereof. *f.* 19.

Purchasing
lands.

10. The visitors and guardians shall be a body corporate, and enabled to take by purchase or lease any lands not exceeding in any city or town one acre, and in the open country twenty acres, for the site of a house and for lands to be occupied for the purposes of this act. *f.* 21.

Persons incapacitated, as infants, femes covert, and the like, shall have power to sell or lease, not exceeding the quantities aforesaid. *f.* 22, 23.

Inclosing com-
mons.

11. The guardians may inclose from any waste or common, with consent of the lord of the manor, and the major part in value of the persons having right of common thereon, any quantity not exceeding ten acres, for building upon or improving the same for the benefit of such poor house. *f.* 27.

Borrowing mo-
ney.

12. The visitor and guardian, where the expences or their proportion thereof respectively shall amount to 100 l. or upwards, may borrow the same at interest, and secure the same by a charge upon the poor rate, in sums not exceeding 50l. each, for the greater ease in discharging the same. And the guardians and their successors shall keep down the interest ; and when the principal shall be called for, they may borrow it from some other person by assignment of the security. *f.* 20.

Admitting pau-
pers.

13. Every person sent to the poor house shall deliver to the governor an order for his admission signed by one of the guardians. *f.* 28.

But

But no person shall be sent to such poor house, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour, and except such orphan children as shall be sent thither by order of the guardian with the approbation of the visitor, and except such children as shall necessarily go with their mothers thither for sustenance. *s. 29.*

14. All infant children of tender years, and who from accident or misfortune shall become chargeable to the parish or place where they belong, may be either sent to such poor house, or be placed by the guardian with the approbation of the visitor with some reputable person at such weekly allowance as shall be agreed upon, until such child shall be of age to go to service or bound apprentice; and the visitor shall see that they be so placed out, at the expence of the place to which they shall belong, according to the laws now in being: Provided, that if the parents or relations of such poor child so sent to such house, or any other responsible person, shall desire to receive and provide for such poor child, the guardian may dismiss him from the poor house and deliver him to such person: Provided also, that nothing herein shall give any power to separate any child under the age of seven years from his parent or parents without their consent. *s. 30.*

15. All idle or disorderly persons, who are able, but not willing, to work and maintain themselves and families, shall be prosecuted by the guardians, and punished as idle and disorderly persons are directed to be by the vagrant act of 17 G. 2. And if any guardian shall neglect to make complaint thereof against such person to some neighbouring justice within ten days after it shall come to his knowledge, he shall forfeit a sum not exceeding 5*l.* nor less than 20*s.* half thereof to be paid to the informer. *s. 31.*

Persons able to work, but not willing.

16. Where there shall be any poor person able and willing to work, but who cannot get employment, the guardian may agree for the labour of such poor person at any employment suited to his strength and capacity, and maintain him until such employment shall be procured, and during the time of such work, and to receive the money earned, and apply it in such maintenance, and make up the deficiency; and if such poor person shall refuse to work, or run away from such employment, the guardian shall complain to a justice, who shall on conviction commit the offender to the house of correction to be kept to hard labour not exceeding three months, nor less than one. *s. 32.*

Persons not able to get employment.

17. From the time that any parish, township, or place shall have adopted the provisions of this act, so much of the

Farming out the poor to cease.

the act 9 G. 2. 7. as respects the maintaining or hiring out the labour of the poor by contract shall be repealed. *f. 1.*

Provided, that the visitors and guardians may make agreements with any person for the diet or cloathing of such poor persons who shall be sent to the houses provided by this act, and for their work and labour; so that such agreement be made for not longer than 12 months, and so as the same be under the controul of the visitor, guardian, and governor; with power to two justices to dissolve the contract. *f. 2.*

Occasional relief
ordered by the
justices.

18. On complaint upon oath to a justice, on behalf of any poor person belonging to any parish or place, that the guardian hath refused to such poor person proper relief, the justice (on enquiry into the circumstances upon oath) may order some weekly or other relief, or direct such guardian to send him to the poor house, if he shall appear to be a fit object, to be kept and provided for there; which order shall be complied with by the guardian within two days after he shall receive the same, on pain of 5 l. of which sum so much shall be paid to such poor person as the justice shall direct, the remainder to be applied as the other penalties by this act. *f. 37.*

Or if it shall appear that such person is able and willing to work, but wants employment, the justice may order the guardian to procure him maintenance and employment in the manner herein before directed: Or if such person shall appear to be an idle or disorderly person, and has not used proper means to get employment; or that he is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses or places of bad repute, doth not maintain his wife or children; the justice may commit him to the house of correction for any time not exceeding three months, nor less than one. *f. 35.*

Provided, that in places where a visitor is appointed, application shall be first made to the guardian; and if he refuses redress, then application shall be made to the visitor; and if he refuses, then application shall be made to a justice. *f. 36.*

Maintenance.

19. The poor persons sent to every such house shall be maintained at the general expence of the parishes or places so uniting. *f. 24.*

And the treasurer, with the assistance of the governor, shall provide all necessaries for maintenance of such poor, and keep an account thereof. *id.*

Cloathing.

20. The guardian of the poor for any parish or place shall provide, at the expence of such parish or place, suitable

suitable cloathing for the persons sent by him to such poor house; which if he shall neglect to do, the governor or one of the guardians of such house shall complain to a neighbouring justice, who shall summon the person complained of, and direct him to provide such cloathing; and if he shall make default in providing the same within ten days after such direction, the justice shall order the governor of such poor house to provide the same, and levy the price thereof, together with costs and charges, by distress and sale of the goods of such guardian so making default.

§. 33.

21. Every person receiving weekly relief shall wear the badge directed by the 8 & 9 W. unless directed otherwise by a justice on proof of very decent and orderly behaviour. §. 35.

Badge.

22. And there shall be a meeting of the guardians at the poor house, on the first *Monday* in every month, to state and examine the accounts of the preceding month. §. 24.

Monthly meetings.

At which meeting the treasurer shall produce his accounts, and the money due to him shall be settled and adjusted in proportion to the sums paid by the respective parishes or places at a medium of three years, next before such agreement in writing. And the overseers, on pain of 5 l. shall attend and give an account what has been the expence at a medium for three years. §. 24, 25.

And if the guardian shall not attend the monthly meeting, or send some person to attend and make payments for him (if by some accident he cannot attend himself); he shall forfeit not exceeding 5 l. nor less than 40 s. §. 26.

23. The justices may hold special sessions for the purposes of this act; on giving proper notices to the several justices, peace officers, and guardians. §. 16.

Justices may hold special sessions.

24. If any poor person sent to such house shall embezel or wilfully waste any of the goods or materials, he shall be committed to the house of correction not exceeding six months nor less than two. §. 40.

Pauper embezzling goods.

25. If any visitor, guardian, or governor shall sell or furnish any materials, goods, cloaths, victuals, or provisions; or do any work in his trade for the use of any work house, poor house, or poor persons, within any place for which he shall be appointed to act; or be concerned in trade or interest with any person who shall sell or furnish the same; he shall forfeit not exceeding 20 l. nor less than 5 l. §. 42.

Officer not to be a dealer.

26. If any poor person shall be retarded on his passage through any parish or place in which he has no legal settlement, by reason of any accident, sickness, or bodily infirmity

Occasional poor falling sick.

firmity, without means of subsistence, the guardian near the place where such distressed object shall be, shall provide for him lodging and suitable nourishment and assistance (and also cloathing if necessary), until he can be removed with safety; and when he shall be fit to be removed shall carry him to some neighbouring justices, who shall examine him on oath touching the place of his settlement, and make an order for his removal thither if they think fit. And the parish officer who shall so provide for such poor person shall make a charge of the expences; which, on being allowed by the justices, shall be paid by the guardian of the parish or place where such poor person shall be settled, if that can be discovered, and be within the county: Or if such person shall die before he can be so examined, or shall be found dead in any parish or place to which he did not belong, the guardian of that place shall cause him to be buried in the parish or place where he so died, or was found dead, and make a charge of the expences thereof; which, being allowed by a justice, shall be paid by the guardian of the place where such person shall appear to have been settled, if it be within the county; but if the settlement cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer out of the county rate. *s. 38.*

Inticing poor persons to remove without a warrant.

27. Whereas it frequently happens, that poor children, pregnant women, or persons afflicted with sickness or some bodily infirmity, are inticed or conveyed by parish officers, or other persons, from one parish or place to another, without any legal order of removal, in order to ease the one parish or place, and to burden the other with such poor persons; if any guardian or other person shall so intice, convey, or remove, or cause or procure to be so inticed, conveyed, or removed, any such poor person from one parish or place to another which shall adopt the provisions of this act, without an order of removal from two justices, he shall forfeit not exceeding 20 l. nor less than 5 l. *s. 41.*

Penalties.

28. All penalties inflicted by this act shall be recovered before one justice of the jurisdiction where the offender dwells, by distress: for want of sufficient distress, the offender to be committed to the house of correction not exceeding six months, nor less than one. Which said penalties, not herein otherwise directed, shall be paid to the treasurer towards defraying the expences of the house. *s. 45.*

Appeal.

29. Persons aggrieved may appeal to the next sessions, giving eight days notice, and giving security by recognizance

zance to pay the costs if the matter shall be determined against the appellant. *f.* 46.

30. Finally, There are rules, orders, and regulations specified in the act to be observed at every such poor house, with such additions as shall be made by the justices at a special sessions; provided, that such additions be not contradictory to these same rules and orders, and that the same be not repealed at the quarter sessions: And the governors shall cause the same rules to be printed in plain legible characters, and fixed up in some conspicuous part of such house. *f.* 34. Special rules and forms.

There are also in the act special precedents of forms of proceeding in some of the most material instances; which rules and forms being somewhat long, and not capable of being abridged, it is thought proper for these and other minute particulars to refer to the act itself.

END OF THE THIRD VOLUME.

ERRATA in Vol. III.

Page 10. line 30. *for* it read *It*.

11. — 10. *strike a out*.

182. — 3. *for* 1788 read 1793.

255. — 34. *for* l. 3. 20. read 20 G. 3. c. 17. l. 3. ~~20~~

386. — 18. *strike out the word* him.

433. — *margin for* endure read *enure*.

568. — 33. *for* meadows read *meadow*.

— 38. *for* pastures read *pasture*.

571. — 5. *for* Piddletrentside read *Todpuddle*.

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THE Editor had agreed to supply the Proprietors of the learned Judge's celebrated Commentaries with Notes and Additions for a New Edition, which had already gone to the Press; but it would necessarily have required several Months to have completed so large a Work, and Circumstances have arisen which have induced the Proprietors to request the Editor's Permission to adopt this Mode of Publication.

In this Edition, no Alteration whatever will be made in the Author's Text, which will be taken from the Edition published immediately after his Death, and which included his last valuable Additions and Corrections:—But a great Variety of Notes by the Editor will be subjoined, to enlarge and illustrate each Subject;—the principal Alterations which have been made in the Law to the present Time will be stated and explained;—and when any material Error is perceived in the Author's Text, it will be noticed.

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